Supreme Court, U.S.
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No. 91-1453

IN THE

Supreme Court of the United States

October Term, 1991

LIEU B. HOANG

Petitioner

V.

STEPHEN M. SIMS, DANIEL J. SIGLER,
JOHN W. FORCUM, DANE L. TUBERGEN
JOSEPH SQUADRITO, AND STATE OF INDIANA

Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

PETITION FOR WRIT OF CERTIORARI

LIEU B. HOANG
Pro se Petitioner
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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Accused constitutional rights to trial and due process under the *Sixth* and *Fourteenth Amendments* are violated by Indiana Code (IC) 35-36-3-1 *et seq.* where the vindictive Respondents have lacked both evidence and capacity to convict the Accused for any alleged crime.

2. Whether the Accused has the constitutional rights to appeal where he is denied the rights to trial, liberty, freedom of speach, due process, and equal protection under the law.

3. Whether the District Court erred and abused its discretion in denying a Writ of Habeas Corpus without an evidentiary hearing where factual evidence contradicted State-Court Record that consisted of only pleading papers and where the Respondents did not deny nor did they show any cause of the illegal restraint without trial in their Return to Order to Show Cause as required by 28 U.S.C. § 2243 & 2254.

4. Whether the State-Court File consisted of only pleading papers and without any transcript of the proceedings is within the meaning of *"the full and complete State-Court Record"* for ruling on Application for Writ of Habeas Corpus.

5. Whether the Respondents' actions against the Accused such as staging incidents to unlawfully arrest and restrain him without trial, falsifying State-Court Records, perjuring, unlawful searchs and seizures, destructions of evidence, attempted murders, etc. are within the meaning of the *"Orderly State-Court Administration"*.

6. Whether the Criminal Justice System must anyway protect the criminal conspirators who happened to be the judicial officials and law enforcement officers over the innocent Accused.

7. Whether the District Court erred and abused its discretion in refusing to rule on the Motion to Order the U.S. Attorney General to file an Application for Appointment of an Independent Counsel under 28 U.S.C. § 591(c) & 592(c) where the evidence conclusively warranted a grand jury investigation conducted by an Independent Counsel to the violations of the federal criminal statutes by the Respondents and then by some high ranking officials of the U.S. Department of Justice who personally knew those Repondents and evidently covered up said violations of the federal criminal statutes.

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PETITION FOR WRIT OF CERTIORARI*

To the Honorable William H. Rehnquist, Chief Justice, and the Honorable Byron R. White, Harry A. Blackmun, John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, David Souter and Clarence Thomas, Associate Justices of the Supreme Court of the United States.

The Pro Se Petitioner, Lieu B. Hoang, respectfully requests that a Writ of Certiorari be issued to review the order and opinion of the United States District Court for the Northern District of Indiana, Fort Wayne Division.

OPINIONS BELOW

- The August 16, 1991 final order of the United States Court of Appeals is not reported and is appended as Appendix 1 (*See* A. 1).

- The May 10, 1991 final order of the United States District Court is not reported and is appended as Appendix 3 (*See* A. 3).

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* On November 26, 1991, this Court, by the Hon. John Paul Stevens, granted Hoang's Application for Leave to file a Petition in Excess of the Page Limitation.

JURISDICTION

- The Court of Appeals' final order denying Hoang's Petition for Certificate of Probable Cause for appeal entered on August 16, 1991.

- The Jurisdiction of this Court is, therefore, invoked under 28 U.S.C. § 1254 (1) to review the District Court's final order denying Hoang's Application for Writ of Habeas Corpus and its refusal to rule on his Motion to Order the U.S. Attorney General to file an Application for an Independent Counsel entered on May 10, 1991.

CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

- AMENDMENT IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...

- AMENDMENT V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury... nor be deprived of life, liberty, or property, without due process of law...

- AMENDMENT VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law...

- AMENDMENT XIV: All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- 18 U.S.C. § 241: If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; ... They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

- 28 U.S.C. § 2243, ¶ 3: The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

¶4: When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

STATEMENT OF THE CASE

NOTE: *The following factual presentations are based on the evidence and the State-Court Record before it was falsified by the Respondents. Any such falsified record presented here will be specified upon. Some of the evidence are not presented here nor appended in the Appendix especially the evidence to impeach them and their criminal co-conspirators for perjury.*

Hoang's Application for Writ of Habeas Corpus filed on February 28, 1991 in the U.S. District Court for the Northern District of Indiana, Fort Wayne Division, arising from the Respondents' abuses of their State authorities and violations of the *First, Fourth, Fifth, Sixth* and *Fourteenth Amendments* of the United States Constitution. Like the District Court once stated, this case is so *"unique, complicated"* and *"in unusual circumstances"* that in order to understand why they arrested and restrained Hoang without trial indefinitely and committed him to a subhuman mental institution for the mentally retarded defendants after he repeatedly refused to *"resolve the cases without trial"* or to *"settle the matter"* with them by not signing an agreement to give up his constitutional rights to trial and leave the State so Allen County Prosecutor Stephen M. Sims could run for the U.S. Congress again without fearing that Hoang would turn the evidence of their criminal activities to the local media that Sims had to withdraw from said race like the last time, we have to go back to the roots of this case.

THE ROOTS OF THE CONSPIRACY

1. On October 27, 1986, Hoang filed complaints with the Indiana Supreme Court Disciplinary Commission against Sims, his Staff Deputy Prosecutors, and a local attorney, Leonard E. Eilbacher who was Sims' advisor for persecuting Hoang and was a law partner of the presiding U.S. District Judge William C. Lee. The Commission took no action as some of its members, who knew them personally and came from Fort Wayne area, spoiled that case by voting against prosecution despite of the evidence (*See* A. 8).

2. During 1987, the U.S. Attorney's office for the Northern District of Indiana, by Assistant U.S. Attorney David H. Miller, and Hoang had a plan of convening a Federal Grand Jury to indict Sims and his

criminal co-conspirators. Miller then, under pressure of his local lawyer-friends who were also friends of Sims, kept rescheduling the meeting as one of those *"mutual friends"* was Miller's predecessor, Charles F. Leonard. Sims also approached Miller himself with a contrived plan of a *"Joint State and Federal Investigation"* of North-East Indiana drug-dealers for the purpose of making it an appearance of a conflict of interest for the U.S. Attorney's office for the Northern District of Indiana to prosecute Sims and his criminal co-conspirators. As a result, Miller canceled the plan of convening that federal grand jury investigation and on February 2, 1988, referred the case to the Civil Rights Division, Criminal Section of the U.S. Department of Justice. But Sims and his criminal co-conspirators also had personal friends or relatives who were high ranking officials of the Department of Justice such as Daniel Bell, who has been the Deputy Chief of the Civil Rights Division, and Stephen A. Goldstein who has recently been transferred to the Veterans Administration. Those high ranking officials, therefore, not only refused to do their job with some ridiculous excuses such as *"We have to wait until their State proceedings are over", "Still under review...we haven't found any serious violation yet", It's not a serious violation because you haven't died yet", "The statute of limitation is over, you should have come to us sooner", "What are their names again? we can't prosecute unknown individuals", "You do not have anything new but the same old kinds of incident that we've heard for years"* etc. but also lent their names to Sims and his criminal co-conspirators as witnesses to perjure for them and against Hoang in the September 1, 1988 criminal trial (Cause No. 02D02-8805-CM-8996) that they lost which is the basic ground under 28 U.S.C § 591(c) *et seq.* for Motion to Order the U.S. Attorney General to File an Application for Appointment of an Independent Counsel (*See* A. 9).

3. And when Sims ran for the United States Congress, Hoang had demanded Sims to withdraw from the race or the evidence of their criminal activities be turned to the local media. Sims quickly withdrew his candidacy without any explanation to the local media.

Any and all above matters were the reasons Sims and his criminal co-conspirators had then staged a series of incidents to illegally arrest and frivolously charge Hoang with a series of felony offenses. Although they could bring in witness after witness to perjure that Hoang had committed these crimes or those crimes but, unlike Hoang, they lacked both physical evidence and capability that they've lost all their cases in a series of disaster at the trials by either jury or impartial judge. They have, however, saved two following cases from such disaster by avoiding the jury trials with Hoang year after year, and these two cases are:

This 1987 case started when they needed very badly some pretense to arrest Hoang including from the following telephone conversations which were secretly recorded by both sides:[1]*

- On September 18, 1987, Hoang tried unsuccessfully to reach Robert Wright by telephone to check on what Sims wanted him to do to Hoang when he asked Sims for a job as his deputy. Wright was not home so Hoang joked with his roommate, Brian Goshorn, about AIDS while Sims secretly listened on their telephone's extension (*See* A. 10).

- On September 19, 1987, Hoang telephoned Karen E. Richards for the purpose of questioning her about her passing Hoang's information to a local newspapers reporter, Anyssa Corcoran, for a personal interview. Richards was busy so she requested Hoang to call her back on the next day (*See* A. 11). Later that morning, Wright had confronted Hoang at the parking lot of the YWCA threatening to kill Hoang over Richards because Sims wanted Hoang dead for *"f--ked him off"* which was the reference to Hoang's actions against them as specified in *the Roots of the Conspiracy*. This whole incident was also recorded by Hoang's micro-cassette recorder hidden inside his boot (*See* A. 12).

- On September 20, 1987, Hoang telephoned Richards again for the same purpose of questioning her about her passing his information to Corcoran but she got mad and hung up her telephone when he started questioning her about that (*See* A. 13).

The above evidence tapes indicated that Hoang had committed no crimes but them, they filed charges against Hoang anyway and switched from telephone harassment under IC 35-45-2-2 to intimidation under IC 35-45-2-1 as they wanted to charge Hoang with felony offense instead of misdemeanor (*See* A. 14), and to proceed this way:

At or about 10:00 AM on September 21, 1987, Sims' police detective, Ronald Lapp, telephoned and invited Hoang to his office at 3:00 PM that day to *"review some police reports"* which Hoang previously requested. Hoang accepted that invitation because he did not know of their scheme of arresting him there and breaking into his home to destroy the evidence documented against them.

At or about 1:30 PM, Lapp went to Sims' office to meet Sims and

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1* At that time, they not only denied having such evidence tapes but also challenged the authenticity of those evidence tapes recorded by Hoang, until Sigler had flipped out on November 27, 1989 that they also secretly recorded those incidents, because those evidence tapes exonerated Hoang from all such criminal charges.

his deputies, Michael McAlexander and Robert W. Gevers, along with Daniel J. Sigler who was a part-time Adams County Prosecutor and whom Hoang just interviewed for a civil case on April 1, 1986 but did not employ because of Sigler's corrupt ideas. Sigler, therefore, could not be, and although had never been appointed as a special prosecutor for this criminal case as required by IC 33-14-1-6 (*See* A. 15), had illegally signed his name as the Special Prosecutor on the Affidavit for Probable Cause (*See* A. 16) and on the Information for two (2) counts of intimidation (*See* A. 17 *and* A. 18) which were prepared by Sims and/or Sims' staff. During that signing, Wright also came there joining them with another Deputy Prosecutor. Then they all went to Allen Superior Court filing said papers and got a warrant for Hoang's arrest for *"intimidating"* Wright.

At or about 3:00 PM, Lapp brought said warrant back to his office with two Allen County Warrant Officers, Michael Keesler and Allen Householder, and city police detective David Walda to arrest Hoang who was waiting there. They then searched Hoang and found a micro-cassette recorder in his boot recording that arrest with the same micro-tape recorded the previous meeting with Lapp. They allowed Hoang to bring said micro-tape to the lock-up only to surrender it to Deputy Sheriff Royce White. Lapp then went to the lock-up picking up said micro-tape and brought it back to Sims' office where it was destroyed by recording over with the radio music of WAJI Majic 95.1 fm from 3:58 PM to 4:13 PM that day with an unusual fast speed of 4.8.

At or about 4:00 PM, Hoang's family arrived at the lock-up paying bond, but for some reason they refused to release him until 11:05 PM, according to their own record, or until 1:05 AM of the next day according to their timers. At or about 7:00 PM of that interim, Lapp and some accomplices broke into Hoang's residence searching for and destroying numerous evidence documented against them including nine cassette tapes. According to the forensic experts, they destroyed those tapes by recording over with an unsual fast speed like the way they did earlier to the micro-cassette tape but this time without the input signal. Fortunately, most of the evidence including tapes were just copies, and their break-in was also recorded by a hidden VOX recorder (*See* A. 19).

On September 22, 1987, upon discovering said break-in, Hoang called the FBI but dialed 911 by mistake. Numerous city policemen arrived and agreed that the matter should be handled by the FBI. But FBI Agent Ken Ivan refused to come over to see the evidence including the tape recorded said break-in as he stated that he already knew what happened from a city police detective and then hung up his telephone. Hoang had to call Ivan back the next day to find out what he knew.

He knew about the destruction of evidence and the break-in but refused to do anything as he stated that: *"It's not an issue for the government to concern itself with the burglary in your house."* (*See* A. 20). So Hoang filed a complaint against Ken Ivan with the Office of Professional Responsibility of the Department of Justice.

On September 25, 1987, Sigler failed to appear at the initial hearing so it had to be continued. Sigler stated to numerous local attorneys that he did not appear because he was afraid that Hoang would recognize him (from the interview of April 1, 1986). Anyway, they didn't state Sigler's failure to appear on the entry and docket sheet but his failure to appear was recorded in the transcript of proceedings of said date.

On October 13, 1987, Lapp broke into Hoang's residence again where he used Hoang's telephone to call Richards. Richards was not home so Lapp hung up the phone before it was recorded by Richards' answering machine, and was, therefore, registered in their GTE tracing as a hung-up-phone-call. But it was recorded by Hoang's tapping and recording system as Appendix 21 (*See* A. 21).

At or about 8:00 PM on October 16, 1987, Wright tricked Hoang into going to the police station where Sims had already summoned Allen County Bail Bonds Commissioner, James R. Seely, waiting there to arrest and revoke Hoang's bond without a hearing which was illegal under IC 35-33-8-5(d)(1) (*See* A. 22). This whole incident was also recorded by two (2) micro-cassette recorders hidden inside Hoang's boot (*See* A. 23). But the second micro-tape and recorder were then illegally seized by Seely. They immediately spread rumors that Hoang was so crazy that he was about committing suicide, and they then, in the early morning of October 21, went to the solitary cell, where Hoang was confined, strangling him with a towel until he played dead.

On October 22, 1987, Hoang had to employ a local attorney, Linda M. Wagoner, to file a State Court Petition for Writ of Habeas Corpus.

On October 23, 1987, Sigler failed to appear again for the hearing on said Writ of Habeas Corpus so Sims'deputies, Gevers and McAlexander who cursed Sigler for betraying them, had attempted to take over the role of special prosecutor but were told not to by Allen Superior Judge James Jackson, who ordered Hoang released, because Sigler signed his name as the special prosecutor. Sigler's failure to appear again wasn't recorded on the entry and docket sheet again but the transcript of proceedings. So was Sigler's next failure to appear at the re-scheduled October 30, 1987 initial hearing. Sigfler had complained to numerous local attorneys that he was misled by Sims to get involved, and that all Sims told him in advance was to scare Hoang off to make some deal.

On October 26, 1987, Eilbacher telephoned Wagoner telling her that he took over the unrelated civil case she had with his associate and offered her a generous settlement. He then told her that Hoang was guilty and must either plead guilty or be found guilty, and that Hoang was not what Hoang claimed to be because he already checked and found out that there was no law school in Vietnam which was a lie but Wagoner had accepted his generous offer anyway.

On November 25, 1987, Sigler finally appeared for the initial hearing. With Wagoner's silence, Sigler (instead of the presiding Judge Jackson) had named a panel of three judges for selection of a Special Judge and picked out his favorite David L. Hanselman as a Special Judge which was illegal under Rule 13 of IRCP (*See* A. 24).

On December 10, 1987, Hoang fired Wagoner and forced her to file a Motion to Withdraw as Defense Attorney after she had asked Hoang to accept some deal with them. Then on December 28, Hoang allowed Wagoner to withdraw her Motion to Withdraw after she had pledged loyalty to Hoang by seeking a jury trial date and preparing for trial. On January 15, 1988, Hanselman scheduled the jury trial for July 20 and 21, 1988. But, on June 6, 1988, Wagoner sent Sigler a letter promising him that although Hoang wanted to go to trial she would find some excuse to continue the trial for them. And so, on June 29, 1988, Wagoner filed a Verified Motion for Continuance of the Trial, without Hoang's advance knowledge and approval, in which she had lied about having another jury trial with speedy trial request for an unrelated (misdemeanor traffic) case of *State v. David*, 02D04-8806-CM-11561, and that Hoang *"personally understands the reason for and agrees to this continuance"* (*See* A. 25). As a result, Wagoner was fired again and was forced to file a Motion to Withdraw again on August 24, 1988.

Both Sigler and Hanselman had made it clear that, even without Wagoner, Hoang wouldn't have a trial anyway so Hoang filed a Motion to Dismiss for Lack of Jurisdiction during the pretrial conference on December 2, 1988 and demanded Sigler to show any paper proving that he was legally appointed as a Special Prosecutor under IC 33-14-1-6. Sigler stated that he didn't have any such paper but Hanselman still refused to dismiss the case. Instead, he scheduled a status hearing for January 10, 1989. During the interim and with assistance from Allen Circuit Judge Thomas Ryan, they made up Sims' Petition for Appointment of Special Prosecutor (*See* A. 26), the Order Appointing Sigler as Special Prosecutor of **Adams County** (*See* A. 27) instead of Allen County where the crimes allegedly happened, and the Oath of Sigler (*See* A. 28) and then dated those papers back to September 3 and 11, 1987 to *"legalize"* their proceedings and to deny Hoang's Motion to

Dismiss for Lack of Jurisdiction. So Hoang moved to dismiss the case for violating his constitutional rights and presented evidence including tapes such as Appendix 10, 12 and 19 along with the testimonies about authenticity and voice identification from some national forensic experts such as Michigan State University's Professor Oscar I. Tosi, Ph.D., Sc.D. who invented the voice identification technique and procedure; and Florida State University's Professor Anthony Holbrook, Ph.D., to show them that they had no chance to win and so, on January 25, 1989, when those forensic experts arrived at the court to testify, both Sigler and Hanselman quickly left the courtroom for their home-towns after writing a lie on the entry and docket sheet that Hoang *"fails to appear"*. Then, on February 24, 1989, Hanselman denied Hoang's Motion to Dismiss anyway no matter what evidence was presented.[2*]

On March 16, 1989, Sigler failed to appear again for the pretrial conference for the **4th time** but this is the only time they recorded in the entry and docket sheet that Sigler failed to appear. They then, instead of dismissing the case for insufficient evidence, staged a series of more incidents to illegally arrest him. One of those new incidents is Cause No. 02D04-8905-CF-341 [*Please see page* 16 *to* 20].

At or about 11:00 PM on Friday April 28, 1989, Sims again summoned Seeley to the police station to revoke Hoang's bond right after they arrested him for said above new incident. This time, Seely had, however, telephoned Hanselman first to get a permission but said bond revoked was still illegal under IC 35-33-8-5(d) as it was done without a hearing so they set up a hearing for May 5, 1989 to *"legalize"* said predetermined bond revoked. During the interim, Sigler filed a petition to revoke Hoang's bond that was also prepared by Sims and/or Sims' staff.

On May 9, 1989, Hoang employed another local attorney, Richard Thonert, to file a State Court Writ of Habeas Corpus and Motion for Speedy Trial but Thonert then tried to get a plea-bargain instead because that was what they wanted. As a result, Thonert was fired on May 22, and Wagoner was re-employed on May 24 because she could file such simple motions. Since they wanted Hoang to plead guilty in order to get out of the jail, Wagoner had misled them into believing that Hoang would plead guilty for some misdemeanor charges if they reinstated the bond first which was more than what they could imagine so they reinstated the bond and released him on $40,000.00 bond on

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2* On January 26, 1989, Sigler filed a State's Motion for Discovery which is as unsual as he also served upon Hoang, on November 11, 1987, another State's Motion for Discovery that he did not actually file in Court. On January 24 and February 8, 1989, Eilbacher filed Motions to quash (See the relevancy on page 26 with A. 75)

June 9, 1989 after filing four (4) additional misdemeanor charges (*See* A. 29) for Hoang to plead guilty for the four (4) phone-calls which were secretly recorded by both sides (*See* A. 10, 11, 13 and 21) and releasing him on his own recognizance. Hoang then had to fire Wagoner again and forced her to file a Motion to Withdraw on June 26 after she not only refused to prepare for the jury trial scheduled for July 11 and 12, 1989 but also bugged him to plead guilty for said misdemeanor charges as she promised them when she requested for reinstating the bond.

On July 5, 1989, Hoang filed a complaint with the Indiana Commission on Judicial Qualification against Hanselman after he and Sigler had again made it clear that there would still be no trial. Hanselman was so scared that he recused himself from the case on the next day. But they then used Wagoner, although she had already been fired, to illegally, under Rule 13 of IRCP, install their John W. Forcum of Blackford County as a Special Judge.

On July 11, 1989, both Sigler and Forcum had refused to appear for the jury trial and kept delaying the proceedings so on August 16, Hoang filed a Motion for Discharge for delays and for failure to try him.

On October 11, 1989, Forcum agreed to dismiss the two (2) felony counts of intimidation as they knew Hoang having the evidence tapes (*See* A. 10 *and* 12) from the previous hearing on motions to dismiss but had refused to dismiss the four (4) lesser counts of telephone harassment as they did not know Hoang also having the incidents' recorded tapes to rebut their perjured testimonies (*See* A. 11, 13 *and* 21). So Forcum scheduled a five-day jury trial from November 27 to December 1, 1989 and was so excited, as they thought Hoang would be convicted, that he even illegally, on November 17, 1989, held back the $2,000.00 from the refunded bond money for the two (2) felony counts of intimidation which were dismissed as the *"advance fines"* for those four misdemeanor counts and lied on the docket sheet that: *"The $2,000.00 cash deposit filed September 25, 1989 is not released and by the agreement of the defendant shall apply to the four misdemeanor counts"*. Hoang did not agree to such ridiculous thing and there was no such *"$2,000.00 cash deposit filed September 25, 1989"* but $2,000.00 cash deposit filed on September 21, 1987 and $4,000.00 cash deposit filed on June 9, 1989.

On November 22, 1989, Hoang filed Reciprocal Discovery in which he notified them that he had the evidence tapes and would use those tapes along with forensic experts to rebut those misdemeanor counts. That's when they wanted to postpone the jury trial again indefinitely.

Day 1, Monday November 27, 1989, the jury trial started at 9:30 AM instead of 9:00 AM. Hoang rejected their requests for continuance of

the trial again, so at or about 11:00 AM Deputy Sheriff James Herman who was Sigler's errant doer towed Hoang's car away from the paid public parking lot in the front of the courthouse that Hoang had to spend the lunch-recess finding his car and got back to the courtroom at or about 1:15 PM when they *almost declared* that Hoang had failed to appear to postpone said trial again as they had re-convened at 1:00 PM instead of 1:30 PM. Forcum then ordered Hoang to bring him those evidence tapes when he appeared in court on Day 2. Those evidence tapes were in the custody of Professor Holbrook who was to bring them to the court on Day 4 when he was scheduled to testify. Hoang had requested that those evidence tapes be sent by Federal Express from Professor Holbrook in Florida directly to the Court Reporter, Avis I. Lions, for *chain of custody* and *Hoang's convenience*, but his request was denied. Also on that day, Sigler flipped out saying that they also secretly recorded those same telephone conversations; while Sims and Gevers, although were disqualified and had claimed to have nothing to do with the case, had illegally taken the jury list (*See* A. 30) from the Clerk's Office to tamper with the jury since they had failed to stop the jury trial that day by towing Hoang's car away to make him late.

On Day 2, Tuesday November 28, 1989, at or about 8:15 AM, Hoang was advised by Federal Express that it only guaranteed to deliver those evidence tapes at or about 10:30 AM and that if Hoang wanted to get them earlier he could pick them up at its office. Fearing that if he came to the court without those evidence tapes, Forcum would find Hoang in Contempt of Court for disobeying his order and would use that as an excuse to stop the trial, Hoang had telephoned the court informing it through Law Clerk Suzanne O'Mally that he would be late whether the trial re-convened at 9:00 AM or 9:30 AM because he had to pick up the evidence tapes at Fort Wayne Federal Express' office for Judge Forcum.

After picking up those evidence tapes, Hoang got back to his car only to find that someone whom circumstantial evidence indicated that it was Herman again as he was seen around there during that time, had flattened a tire of Hoang's car. Hoang immediately changed that tire and got back to the courtroom at or before 9:45 AM but it was too late because they already continued the trial by discharging the jury and issuing a warrant for Hoang's arrest for Contempt of Court for *"Failure to Appear"* instead of for *"Disobeying the Court's Order of Day 1"*, and forfeited the $2,000.00 *"advance fines"*. So, no matter what Hoang did, they would have successfully stopped the jury trial that day, one way or the other.

After discharging the jury, Forcum *recessed* and *had waited* there with Sigler for Hoang to appear with the evidence tapes (*See* A. 31)

instead of going back to their offices in Decatur and Hartford City had they truly believed that Hoang failed to appear. When Hoang appeared, they arrested him right there in Court with the evidence tapes (*See* A. 31). Hoang was then taken to the lock-up by Herman who also seized two (2) micro-cassette tapes.

On December 1, 1989, Hoang filed a Motion for Speedy Trial.

On December 8, 1989, Hoang employed an Indianapolis Attorney, Michael K. Sutherlin, to file a State Court Writ of Habeas Corpus and appeal to the Indiana Supreme Court under Rule 4(A)(9) of IRAP. But, after talking to them, Sutherlin refused to file anything and stated that they asked him not to because they were going to conditionally drop all charges and release Hoang from the jail on December 13.

On December 13, 1989, Hoang was taken to the courthouse for the status hearing where he met Sutherlin who presented to him their proposed settlement agreement that they would immediately release him if he agreed to leave the State, to give up the evidence, and to their *"protective order"* of allowing them to arrest and jail him without bond and without trial should he ever come back to the State of Indiana. Hoang had rejected such ridiculous agreement and had rather stayed in the jail awaiting his speedy jury trial scheduled for February 5, 1990.

On December 19, 1989, Sutherlin convinced Hoang's family signing the agreement with him releasing him from the responsibility to file said Writ of Habeas Corpus and appeal, and joining him in putting some pressures on Hoang to sign their proposed settlement agreement.

On December 26, 1989, Hoang filed a Petition for Writ of Habeas Corpus and a Response to Forcum's Bond (advance fines) Forfeiture.

On December 27, 1989, Forcum issued a so-called *"Findings of Fact, conclusions of Law and Order"* to deny Hoang's Writ of Habeas Corpus in which Forcum has admitted two material facts that he did order Hoang to bring him those evidence tapes on Day 2 as what he said was in the transcript of proceedings, and that Hoang did telephone O'Mally about he *"would be late"* as they knew that Hoang would come up with the evidence tape to impeach them if they lied about that, but blamed on Hoang for *"delay[ing] his trial contrary to his assertions in hearings that he wanted his trial to proceed"* and even ludicrously complained, in his conclusions of law ¶ 5, that Indiana Code lacked a specific statute for defendant like Hoang whom he said had failed to appear, then minutes later appeared to... surrender (*See* A. 32).

On December 28, 1989, to stop the February 5, 1990 speedy jury trial again, Forcum issued an order (*See* A. 33) in which he misled readers

with distorted information that Hoang suffered from many kinds of mental disorders[3]* which made Hoang incompetent to stand trial and ordered Hoang examined by their psychiatrists under IC 35-36-3-1 although it was designed to protect the senile and the mentally retarded defendants from prosecution because of their lacking the abilities to understand the charges, the court proceedings and to defend themselves (*See* A. 34). Hoang was neither senile nor retarded but IC 35-36-3-1 supplied them what they needed, *inter alia: "if the Court finds that the defendant lacks the ability, it shall delay or continue the trial..."*

On December 28, 1989, their own record (*See* A. 35) indicated that Suzanne O'Mally sent their psychiatrists, Jay D. Fawver and Ludwig G. Heinemann, a cover letter (*See* A. 36 *and* 37) along with the charges which was mandatory, but also said Forcum's misleading order where their psychiatrists got their false idea about Hoang's mental illness which constituted witness-tampering.

On January 8, 1990, Hoang was taken to Fawver's office for the *"psychiatric examination"* and then later to Heinemann's office. Both Fawver and Heinemann used said Forcum's misleading order to ask Hoang about the case. Hoang cooperated to show them that he was not the retarded defendant under IC 35-36-3-1. But both Fawver and Heinemann had *"tailored"* false reports for them to postpone the trial again that Hoang suffered from many kinds of mental disorders like paranoid personality, persecutory delusion, etc. which *"incapacitates him in the preparation of his defense and renders him incompetent to stand trial"*. That was a lie but supposedly that wasn't, and supposedly he was far worse than that like a self-proclaimed-psychopathic killer, he was still entitled to a trial pursuant to IC 35-36-2-3 in which the jury would have the additional options of finding him: *"guilty but mentally ill"* or *"not guilty because of mentally ill"* (*See* A. 38).

On January 26, 1990, both Fawver and Heinemann perjured at the competency hearing exactly what they tailored in their false reports. Under cross-examinations by Hoang, Fawver lied six (6) more times in less than five minutes that he *"received nothing in writing"* from them to hide the fact that he got the idea of Hoang's mental illness from Forcum's misleading order until Hoang showed him the evidence of his receiving that (*See* A. 39). Heinemann, in turn, had to admit not only

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3* Forcum claimed that Hoang could not even trust his own family after he had unsuccessfully tricked Hoang's mother to bring him the evidence tape about Hoang telephoning O'Malley that he "would be late".

Some of Forcum's other false grounds came from Eilbacher such as "delusions or figments of imagination of a law degree because there was no law school in Vietnam".

his receiving such misinformation from them but also the reason he found Hoang incompetent to stand trial was said misinformation he received (*See* A. 40). Hoang further presented the evidence of not only his competence to stand trial but also his pragmaticus of winning every case against them especially when he proceeded *pro se*, and sometimes waived jury before an impartial judge such as Allen Superior Judge Alfred W. Moellering (*See* A. 41).

On December 31, 1990, Forcum issued an order (*See* A. 42) finding Hoang incompetent to stand trial anyway as their scheme to postpone the February 5, 1990 speedy jury trial indefinitely, and ordered Hoang committed to a mental institution. But Forcum also ordered the Sheriff of Allen County not to transport Hoang away yet as they first had to find a mental institution that would admit people who was not mentally ill like Hoang. Unable to find such a place, so, on February 15, 1990, they tried to get rid of Hoang by attempting to murder him in a solitary cell of the Allen County Jail. Unlike the last attempted murder of October 21, 1987 and whom (Heinemann and FBI Agent Ivan who also had conflict of interest) they used to fool the Department of Justice again that Hoang tried to commit suicide, this attempted murder is well documented with conclusive physical evidence and six (6) eyewitnesses.

Finally, with assistance from Katherine Gerber Gregory of Indiana Department of Mental Health, they found Logansport State Hospital that would admit the *"pretending incompetent defendants"* for as long as it could collect about $200.00 a day for each from the Federal Medicaid Program. Even so, Forcum still wouldn't dare to order the Allen County Sheriff to transport Hoang there because Hoang didn't pretend but they did. So, on March 2, 1990, one of them, John F. Surbeck, had to *"illegally"* (because he was not the Special Judge for this case) issue an order to transport Hoang there instead (*See* A. 43).

On March 5, 1990, Hoang was transported to Logansport State Hospital which is not a real hospital but a confinement center with subhuman living conditions for the mentally retarded defendants under IC 35-36-3-1 *et seq.* Many have been confined there for decades or even for lifes just for lack of intelligences to stand trial. Hoang still cooperated by taking all kinds of scientific tests from IQ to electronic scans of his brain as he had gambled that they could not falsify such computer results. Indeed, they couldn't as its psychologist, T.M. Lesher, Ph.D., has stated in his memos and psychological reports that Hoang's intelligence: **"estimated in superior range"** because of Hoang's genius IQ of 192, and that: **"Ruled out mental disorder including paranoid and delusion"** because all results of the scientific tests were negative. So Hoang demanded to be sent right back with

a certification that he was not mentally ill in the first place. But its chief psychiatrist, John L. Strefling, M.D. stated that he was instructed by both Gregory and Kathleen P. Mills, a Deputy to Indiana Attorney General Linley E. Pearson who was a Sims' friend and political ally, that he had to go along with the *"system"* by confining Hoang there for a while before sending Hoang back with the certification that Hoang *"has attained the ability to understand the proceedings and assist in the preparation of his defense"*. Mills then quashed Hoang's subpoena for those negative test results with an affidavit she prepared for Strefling to sign that Hoang *"suffers from delusional disorder, persecutory type, with manic manifestations"*, and that: *"Hoang's access to his records would increase his paranoia, cause him to become more psychotic, and hinder his treatment"*.

Meanwhile, Hoang's habeas corpus appeal pursuant to rule 4(A)(9) of IRAP (*See* A. 44) to the Indiana Supreme Court was unlawfully blocked as well. His Brief for Appellant and the Record of Proceedings were returned by "the Clerk's Office for Indiana Supreme Court and Court of Appeals" with the handwritten note stating that: *"Any appeal would go to the Indiana Court of Appeals"* (*See* A. 45). This note was written by Deputy Clerk Kim Pollard as she was instructed by Deputy Indiana Supreme Court Administrator Mark Bates who was instructed by Randall T. Shepard, who was Sims' friend and political ally like Pearson, that: *"Do not accept Hoang's Brief unless it's captioned with Indiana Court of Appeals"*.

As the filing deadline elapsed, Hoang had no other choice but to recaption his Brief for Appellant to the Indiana Court of Appeals like they wanted and filed said Brief on January 23, 1990. The Indiana Attorney General's office filed the Brief for Appellee on February 21. Hoang filed his Reply Brief on March 7. And the Indiana Court of Appeals dismissed the appeal on April 26, 1990 (*See* A. 46) for lack of jurisdiction pursuant to rule 4(A)(9) of IRAP, and as Hoang expected because they did not allow him to file it with Indiana Supreme Court.

Logansport State Hospital could not make $16,119.00 for confining Hoang there as neither Hoang nor his family would sign any claim for it to collect said money from the insurance company or its fraudulent Federal Medicaid so it wanted to send Hoang back as soon as possible under the arrangement with them that: *"Hoang has attained the ability to understand the proceedings and assist in the preparation of his defense"* because of the *"psycho-drugs"* which Hoang had never taken, and that Hoang should be represented by *"his attorney"* because of his *"paranoid interpretations"* so they could use *"his attorney"* to delay the trial again while pressuring him to sign their proposed agreement.

On May 16, 1990, Jeffrey H. Smith, who was the Superintendent of Logansport State Hospital, filed such false certification along with a false psychiatric report of Strefling in which Strefling still had to admit (on page 3) the following results: *"... Psychology reports indicate he (Hoang) is currently functioning in the average range intellectually. It is judged that this is a very conservative estimate of his basic potential. The BIP results are negative regarding organicity. He answered questions concerning legal protocol and procedures in an expert manner. He was knowledgeable of proper courtroom behavior and trial procedures...".* If so, what was his incompetence in the first place?

On May 25, 1990, Hoang was transported back to the Allen County Jail. On June 8, Forcum released Hoang so they did not have to try Hoang within 70 days and also because both Wagoner and Sutherlin made them believe that Hoang would do or sign anything as he had broken down after years of being confined without trial. Forcum, therefore, did not schedule a trial date but imposed illegal conditions that Hoang must not fire Sutherlin who just filed a written appearance to press Hoang into signing the agreement with them and that Hoang must *"not contact the court personnel directly or indirectly"* to prevent Hoang from going to the court or sending someone there to file demand for trial and to dig up their falsified records (*See* A. 47). [*Continued to page 20 to 24: The latest Illegal Arrest and Restraint*]

CAUSE NO. 02D04-8905 CF-341

This **1989** case started right after Sims' withdrawing from the specially held U.S. Congressional race as Hoang demanded and just after Sigler's failue to appear again for the March 16, 1989 Pretrial Conference for the 4th time of the above 1987 case. There are some police reports indicating that they had planned to stage this incident at Stephen Penrose's second floor appartment but switched to Richards' house at the last minute for better motive of *"Rape and Confinement"*.

At or about 10:00 PM on April 28, 1989, while driving on Coliseum Boulevard, Hoang was chased by Sims' three officers: Thomas Taylor with police squad car, Michael Tippmann and Alan Cook with a blue/white station wagon (van) that had a ladder on its roof. That was when Hoang turned on his two (2) micro-cassette recorders and two (2) cameras to record the incident. One recorder and one camera were very well hidden inside Hoang's car (*See* A. 48 *and* 49). The other micro-cassette recorder and micro-camera were hidden at the shoulder of the double shirt that he wore. By the time they stopped him at the Hobson Road, he had taken five (5) pictures of their chasing him with the

camera inside his car (*See* A. 49). Hoang was then pulled out of his car by Cook and Taylor who had beaten him up unconsciously and until his ribs were broken (*See* A. 50).

The water from the afternoon rain accumulated on the balcony of Karen Richards' house, where they brought Hoang after the beating, had revived him so he witnessed and took four (4) pictures (with the micro-camera hidden in the shoulder of his double shirt) of Tippman and Cook rushing down to the ground by a ladder, then carried it back to their van and sped away just when Richards got home. So Hoang also took a picture of her driving into the garage and then drove out to the front of her house as she saw their speeding away. Then, according to Richards, she called the police after seeing Hoang lying face up inside a pool of water on her balcony.

Taylor came back with numerous other police officers, such as Eric J. Hinsey, Michael R. Scheele, Robert Schneider, etc. in response to Richards' emergency phone-call, to beat up Hoang again and to arrest Hoang for *"trespassing"*. While carrying Hoang to their police squad car, Taylor accidentally discovered and seized both micro-cassette recorder and micro-camera hidden at the shoulders of his double shirt.

Police Photographer Dennis Ramos was also summoned there taking the pictures of the scene and evidence including Hoang's boots which they just seized and tied together with a piece of wire through the zippers as their false evidence that Hoang took off his boots to climb to Richards' balcony. Then Ramos, along with Hinsey, Scheele, Schneider and Richards, went down to the back yard below the balcony to find clues and to discuss about how Hoang could climb up to the balcony without a ladder.

But Sims'instruction, through the police radio, was to charge Hoang with serious felony offenses instead of trespassing which was a misdemeanor, so Taylor used the same piece of wire that held Hoang's boots together to hook inside the screen door handle of Richards' house as the false evidence that Hoang tried to break into her house to charge Hoang with attempted burglary which was a class B felony (*See* A. 51). Taylor then called Ramos back to the balcony to take the pictures of the scene again with that same piece of wire hooked inside the screen door handle instead of through the zippers of Hoang's boots in the first set of Ramos' photographs. Then Hoang was taken to the Detective Bureau where he saw Tippmann talking to Seely who was summoned there by Sims to revoke Hoang's bond for the 1987 case (*See Page* 9, ¶ 3) while Scheele, Schneider and Hinsey went to Hoang's car, which was driven there by Tippmann, to search it without a warrant (*See* A. 48), and then towed it away.

At or about 9:30 AM on May 1, 1989, Sims Deputy Prosecutor, Fran Gull, argued at the initial hearing against Hoang's request for bond with Judge Moellering that there was no need to set bond for this 1989 case because Hoang *"could not be bailed out anyway"* as Special Judge Hanselman of the 1987 case *"already authorized Mr. Seely to revoke his bond for that case"*.

At or about 4:33 PM on that May 1, 1989, Sims and/or someone on his behalf rushed to the clerk's office after it had already been closed at 4:30 PM to file a Petition for Special Prosecutor *(See* A. 52 *and its filing time at the left bottom corner)* and then brought it to Allen Circuit Judge Thomas L. Ryan at his chamber, who was telephoned in advance by Sims to wait there for them, to grant the petition and to appoint Sigler as the Special Prosecutor.

They changed their plan at the last minute because four out of five photographs developed from Hoang's micro camera which they seized were incriminating against them that they had to get rid of by getting a *"Puppet Special Prosecutor"* like Sigler again who would go to the court the next morning for the search-warrant hearing on said micro camera with the microfilm that they had switched to make it appear like nobody had touched the microfilm yet.

There was no typed-up order appointing Sigler as Special Prosecutor for Ryan to sign as his secretary already left for that day, and since Sims' instruction was to get it done that day for the next-morning-search-warrant hearing so Ryan got it done by writing at the bottom of Sims' petition that: *"Considered and granted at 4:35 p.m. 5-1-89 Thomas L. Ryan" (See* A. 52 *at the bottom edge)* without appointing anyone as a Special Prosecutor for the case.

At or about 10:03 AM on May 2, 1989, Sigler went to the Clerk's office to file his oath as a Special Prosecutor that was prepared by Sims and/or Sims' staff (*See* A. 53), and then went to the courtroom for said search-warrant hearing before Allen Superior Judge Philip Thieme without knowing that he has never been appointed as Special Prosecutor just like the last time (*See page* 8, ¶ 4) until Hoang brought this matter up on September 28, 1989. By then, they could not make the order up like the last time anymore because Hoang already copied their docket sheet certifying that there was no such order appointing Sigler as a Special Prosecutor after Sims filed his petition on May 1, 1989 and before Sigler filed his oath on May 2, 1989 (*See* A. 54).

On May 4, 1989, Sigler filed the Information for two (2) class B felony counts of attempted burglary with intent to commit *"rape"* and *"confinement"*, and a class D felony of resisting arrest (*See* A. 55)

along with the Affidavit of Probable Cause (*See* A. 56) which were also prepared by Sims and/or Sims' staff. Supposedly whatever they stated in that affidavit is true so where is the evidence of *"intent to commit rape and confinement"?*

On May 5, 1989, John F. Surbeck again took over the case from Judge Moellering to disqualify all Allen Superior Judges from the case, as they feared that Judge Moellering would rule in Hoang's favor like he had done before (*See* A. 41), and named David Hanselman again with Roger Cosbey and Paul Cherry in the panel for selection of a Special Judge under rule 13 of IRCP.

On May 15, 1989, Hoang struck Hanselman because he was one of them so Sigler had demanded repeatedly for weeks and through two local attorneys, Thonert and Wagoner, that Hoang had to strike either Cosbey or Cherry so he could strike Hanselman because he had the right to strike first. Hoang did not strike someone else as he did not believe that Sigler would strike Hanselman so Sigler did not strike at all as Judge Cherry of DeKalb County knew who Hoang was and did not want to get involved with their conspiracy. Judge Cosbey of Noble County remained and was, on June 7, 1989, selected as Special Judge.

Special Judge Cosbey set a hearing for June 22, 1989 but they got rid of him, because he's an impartial Judge like Moellering, and named a second panel on June 29 with their Dane L. Tubergen of Steuben County along with Jeffrey Heffelfinger and Howard Petersen. On June 30, 1989, Hoang called the court, through its law clerk David Vangilter, striking their Tubergen. But Sigler did not demand Hoang to strike someone else anymore because they were plotting the following:

On July 26, 1989, they falsified an entry that: *"Parties having failed to strike, the Clerk now strikes Judge Petersen and Judge Heffelfinger from the panel. Judge Tubergen remains, subject to his qualification and acceptance."* (*See* A. 57). On June 27, upon receiving a copy of this false entry in which its forged signature didn't look anything like like the genuine signature of the Clerk of Allen Superior Court, Connie L. Campbell (*Please compare it with* A. 58), Hoang telephoned Clerk Campbell who stated that she did not select Tubergen nor did she authorize anyone to select Tubergen as a Special Judge (*See* A. 59).

On September 28, 1989 Hoang filed a request with Clerk Campbell to withdraw the submission of the cause from Tubergen and transfer it to the Indiana Supreme Court for appointment of a Special Judge under rule 53.1 of IRTP because Tubergen failed to rule on numerous motions including Motion for Discovery filed on May 9, Motion to Return the Property and Evidence, and Motion to Adjust Bond Conditions filed on

June 23, 1989, etc. Clerk Campbell granted the request and filed her Notice on October 6, (*See* A. 58). But Tubergen immediately ruled by denying all those motions except discovery, which was mandatorily granted, and then sent his report to the Indiana Supreme Court explaining that he was about to rule on those motions. The Indiana Supreme Court believed him and reinstated him on November 13, 1989.

On January 4, 1990, Hoang filed a Motion to Dismiss or in alternative to bar their evidence from the jury trial scheduled for February 26, 1990 because Sigler had failed to comply with the discovery. At the pretrial conference on January 5, Tubergen signaled Sigler to say that he already complied with the discovery but Sigler flipped out that he didn't so Tubergen ordered Sigler to comply with the discovery within the next ten days. On January 11, Sigler sent Hoang a copy of their witness list, a few police reports and thirteen (13) photographs taken around Richards' house, but the evidence right in those photographs indicated that those could not possibly be the photographs taken on the night of the incident by either Hoang or Police Photographer Dennis Ramos.

On February 7, 1990, after Hoang had rejected their proposed settlement agreement (*Please see detail on page* 12, ¶ 4) and had rather stay in the jail waiting for that 1987 case's speedy jury trial scheduled for February 5, and for this 1989 case's jury trial scheduled for February 26, Tubergen had continued the jury trial for this 1989 case as well on the pretense that Hoang was found incompetent to stand trial by Forcum for that 1987 case, to avoid the trial, and ordered him committed to a mental institution (*Please see detail on Page* 13 *and* 14).

On May 25, 1990, Hoang was sent back to the Allen County Jail by Logansport State Hospital (*See detail on Page* 15 *and* 16). And like Forcum did, on June 8, in that 1987 case, Tubergen ordered Hoang released from the jail on $50,000.00 bond as their mis-belief that Hoang had broken down after years of being confined without trial, almost three months of which was in a subhuman mental institution, and would therefore do or sign anything they wanted.

THE LATEST ILLEGAL ARREST AND RESTRAINT

As soon as Hoang was released from the jail, he not only refused to consider any deal with them but also demanded jury trials again and checked with Judge Moellering about his Petition for Appointment of a Special Prosecutor filed on April 3, 1991, so they threatened to arrest him again but had to schedule the jury trials for December 13, 1990 for the 1987 case, and October 15, 1990 for the 1989 case anyway although they had no intention to honor those trials so Hoang told Sutherlin that

he would be fired like Wagoner if there were no jury trials as scheduled.

On September 12, 1990, Hoang had to file the second Motion to Dismiss or in the Alternative to Compel the Discovery at the pretrial conference for the 1989 case by himself because Sutherlin had refused to do that as he feared that they would be mad at him for bringing up their switching Ramos' and Hoang's photographs with said thirteen (13) photographs which, by Sigler's own admission, were taken later on by someone else. Tubergen had refused to rule on said motion on the ground that it was not filed by Sutherlin who already promised them not to bring that up. Sigler then proposed again and more like begged with Sutherlin for a settlement by resolving both 1987 and 1989 cases *"short of trial"* which was immediately rejected by Hoang (*See* A. 60) So Tubergen threatened to stop the trial again with their *"competency proceedings"* and then commanded Sutherlin to stay there with them to draft a new proposed settlement agreement (*See* A. 61) which is similar to their previous one of December 13, 1989 including Paragraph 6 that required Hoang to give up his constitutional rights to trial and speedy trial. Some other Paragraphs were changed a little, such as Paragraph 3 that required Hoang to leave the State for two (2) years instead of forever in the previous one, which is just the time Sims needed to run for the U.S. Congress again, and their last *"Protective Order Paragraph"* that allowed them to arrest him without warrant and jail him without trial was replaced with a new Paragraph of expunging false mentally ill records to lure him into signing it. Hoang, of course, repeatedly refused to sign such a ridiculous agreement again.

On October 11, 1990, just four (4) days before the scheduled jury trial, Sigler called Tubergen who then made a three-party-line-phone-call to Sutherlin talking him into asking for continuance of the trial just like Wagoner (*See Page* 8, ¶ 3, *and* A. 25). Sutherlin then called Hoang informing that the October 15 jury trial had been postponed. Hoang angrily instructed Sutherlin to withdraw from both cases immediately. If there is a question whether Hoang paid his lawyers enough for their loyalties, the answer is Hoang paid Wagoner in advance a flat fee of $5,000.00, and $6,750.00 for Sutherlin which were more than they could make from other cases in Indiana especially from their $750.00 a felony case as Public Defenders. And that's not counting the $9,000.00 Wagoner took from his bank when he was sent to mental institution. Other lawyers here are as bad as them: Denny Geiselman changed his "written story" from Appendix 62 to 63, and Charles Leonard changed the "eyewitness' story" from Appendix 64 to 65 to cover up for them. And this Leonard is the same Leonard who talked Assistant U.S. Attorney David Miller out of convening a Federal Grand Jury to indict them (*See Page* 4, ¶ 1).

On November 15, 1990, they staged a *"Hoang's failure to appear for a status conference"* for the 1989 case by not notifying him of the date, and then used that to blackmail him that they were going to issue a warrant for his arrest if he kept refusing to sign their new proposed settlement agreement.

On December 10, 1990, Hoang brought more than 200 pieces of evidence to the office of the U.S. Attorney General with a specific request for filing an Application for Appointment of an Independent Counsel under 28 U.S.C. § 591(c) & 592(c) because of the personal conflict of interest its personnel, Bell, Goldstein, etc., had (*See details on Page* 4, ¶ 1, *and Appendix* 9). A confidential Assistant to the U.S. Attorney General stated that they would immediately appoint a Federal Prosecutor within the Justice Department who did not have such personal conflict of interest to conduct a federal grand jury investigation instead.

On December 13, 1990, at or about 8:30 AM, Hoang came to the court for Day 1 of the jury trial for the 1987 case and was advised by the Central Scheduling Office that said trial was again postponed indefinitely, but the jury trial for the other case. That was when and how Hoang learned about the 1989 case's jury trial was scheduled for February 5, 1991 because they did not send him any notice nor allow him to contact the court personnel directly or indirectly to get such notice (*See* A. 47). Anyway, Hoang left there to inform his witnesses that they did not have to appear because of said postponement. At or about 10:00 AM, Sutherlin met Sigler and Forcum there where he wrote Hoang a threatening note on their behalf with a specific deadline that: *"Lieu, Judge Forcum will issue a warrant for your arrest on January 1, 1991 if the matter is not settled"* (*See* A. 66).

On December 14, 1990, they staged another *"Hoang's failure to appear"* for the 1989 case by not sending him a notice and lied that he knew about the date by calling them there but did not appear for a... *"discovery conference"* which Sigler had repeatedly refused to comply (*See Page* 20, ¶ 2, Page 21, ¶ 2, *and* A. 60), and then used that to blackmail him again as follow:

On December 17, 1990, Hoang telephoned Tubergen for the purpose of complaining that they did not send him any notice but was given a threatening message, by Jane A. Drill, that: *"He's going to issue a warrant for your arrest and order you committed to a mental institution if you don't sign an agreement with special prosecutor Sigler" (See* A. 67)

On late December 1990 Hoang learned that his case was assigned back to Bell at the Civil Rights Division instead of a Federal Prosecutor who did not have personal conflict of interest (*See* A. 9). With assis-

tance from a Washington DC Newspapers Reporter, Hoang tried to take this matter to the U.S. Attorney General's superior, the President of the United States, through a member of his family to persuade him to direct his Attorney General to file an Application for Appointment of an Independent Counsel for this cause.

On January 15, 1991, they knew about that through two U.S. Secret Service Agents, Jim Deal and Doug Lehman, stationed at Indianapolis Office who knew them professionally but were assigned to check up on Hoang's story which they called *"unbelievable"*. Deal assured Hoang that he would take neither side by writing his report with the stories of both sides. Deal even gave Hoang his business card to call him if they made good their threat of a issuing warrant for Hoang's arrest.

On January 24, 1991, just 12 days before the scheduled February 5 jury trial for the 1989 case, they made good their threat by issuing two warrants, at the same time, for Hoang's arrest for Contempt of Court for Failure to Appear. One was for the 1989 case with $50,000.00 bond (*See* A. 68) and the other was for the 1987 case with **"No bond"** (*See* A. 69) to keep Hoang in jail, and postponed the jury trial indefinitely.

On January 25, 1991, Hoang learned about said two arrest warrants while visiting an Assistant U.S. Attorney in Indianapolis so Hoang telephoned Deal who invited Hoang to his office at 1:30 PM that day to meet his superior whom he said would offer Hoang some protection pending a decision from Washington DC. Deal then telephoned Sigler informing him that Hoang would come there at 1:30 PM when he would do them a favor by arresting Hoang there for them, and that they should send someone there to pick Hoang up as soon as possible. When Hoang came there at 1:30 PM, he was arrested by Deal as their plan, and was transported back to the Allen County Jail right that evening.

On February 1, 1987, Hoang filed Demands for Speedy Trial for both 1987 and 1989 cases. On February 4, Tubergen responded with his order that was back-dated five days in which he again questioned Hoang's competency to stand trial with Hoang's *"in-court conduct"* (*See* A. 70) - reflected on the September 12, 1990 Pre-Trial Conference in which Hoang had *"too many objections"* that Tubergen said Hoang did not have the comprehension to stand trial (*See* A. 60) - and ordered Hoang examined by their same psychiatrists, Fawvers and Heinemann, who had perjured for them that Hoang was incompetent to stand trial to stop the last speedy trial (*See Page* 13 *and* 14), and scheduled a *"competency hearing"* for March 14, 1991.

Unlike the last time, Hoang did not even talk to Fawvers and Heinemann on February 11 and 12, 1991 when he was taken to their

offices again for *"psychiatric examination"*. But that did not stop them from writing false reports again that Hoang was incompetent to stand trial because of mentally ill. And like the last time, Tubergen's idea of Hoang's *"in-court conduct"* as disturbance was tampered with the testimonies of their psychiatrists by adding it up in the report next to the mentally ill.

On February 5, 1991, Hoang filed Petitions for Writ of Habeas Corpus in State Court for both 1987 and 1989 cases. Both petitions were summarily denied, on February 8 and 15, 1991, by both Tubergen and Forcum (*See* A. 71 *and* 72). Although Tubergen admitted that Hoang's Petition *"styled as verified Petition for Writ of Habeas Corpus"*, he had distorted it and ruled it as a *"Motion for Discharge"* to make his order an *"Interlocutory Order"* (*See* A.71) for the purpose of making it impossible for Hoang to file a Habeas Corpus Appeal with the Indiana Supreme Court under rule 4(A)(9) of IRAP (*See* A. 44). But Tubergen has inadvertently made it possible for Hoang to take this matter to the Federal Court System as State Court Remedies for Habeas Corpus Appeal has been, therefore, exhausted.

COURSE OF PROCEEDINGS

United States District Court

On February 28, 1991, Hoang filed an Application for Writ of Habeas Corpus with the U.S. District Court in which the District Court was requested to order those Respondents to release Hoang from the latest illegal restraint, order them to either try Hoang or dismiss both 1987 and 1989 cases, and direct the U.S. Attorney General to file an Application for Appointment of an Independent Counsel which motion was separately filed on April 1, 1991 (*See* A. 9).

On March 4, 1991, the District Court issued two orders directing them to submit *"the full and complete State-Court Record"* within thirty days (*See* A. 7), and to show cause, also within thirty days, why the District Court should not assume jurisdiction over this case and grant the requested relief (*See* A. 6).

On March 6, 1991, Hoang filed a Motion for Stay of State-Court Competency Proceedings and a Motion for Preliminary Ruling on his Application for Writ of Habeas Corpus.

On March 8, 1991, The District Court granted Motion for Stay of State-Court Competency Proceedings, and denied Motion for Preliminary Ruling on Writ of Habeas Corpus (*See* A. 5).

On March 11, 1991, Hoang filed a Motion to Compel the Delivery of Minoxidil Rogaine because they had refused to deliver said medicine until their proposed settlement agreement was signed.

On March 19, 1991, Attorney John O. Feighner filed his Written Appearance on behalf of Respondent Joseph M. Squadrito but failed to serve so Hoang filed a Motion to Strike on March 25.

On March 25, 1991, Deputy Indiana Attorney General David A. Arthur filed his Written Appearance on behalf of Respondents Sims, Sigler, Forcum, Tubergen and the State of Indiana.

On March 26, 1991, Arthur filed the *"Return to Order to Show Cause, Motion to Dismiss and Motion to Vacate Order to File State Court Record"* in which Arthur did not show any cause of the restraint without trial but moved to dismiss this cause on the ground that Hoang *"has failed to exhaust available state court remedy in that he has not yet been tried"* and that *"there has been no trial there is no readily available state court record"* (*See* A. 73).

On March 28, 1991, Feighner filed the same *"Return to Order to Show Cause, Motion to Dismiss and Motion to Vacate Order to File State Court Record"* without showing any cause of the restraint. Feighner further moved the District Court to release him *"from any obligation to file the State Court Record"* and claimed that he *"has no practicable way to obtain said record"* (*See* A. 74). Feighner also filed his Certification of Service, and a Response with Affidavit to Motion to Compel Medicine (Minoxidil Rogaine) Delivery.

On March 29, 1991, Hoang filed his Response to their Motions to Dismiss and to Vacate Order to File State Court Record.

On April 12, 1991, The District Court denied their Motions to Dismiss and to Vacate Order to File State Court Record because Hoang had fully availed himself of the State machinery for commencing trials and had thereby satisfied the exhaustion requirement under *Atkins v. Michigan,* 644 F.2d 543 (6th Cir. 1981), and directed them to submit "the full and complete State Court Record" within ten days (*See* A. 4). Since they did not show any cause of restraint, the District Court should have granted the Writ pursuant to 28 U.S.C. § 2243 & 2254.

On April 26, 1991, four (4) days after the filing deadline and a phone call from the U.S. District Clerk's office, Arthur had submitted two (2) volumes of State-Court *"Files"* for the 1987 and 1989 cases consisting of only pleading papers, letters and reports. Many of which were altered or falsified, especially Sutherlin's letters dated on June 28, and July 23, 1990. And without any transcript of the proceedings such as

the September 12, 1990 Pre-Trial Conference for the 1989 case that was a prelude to the latest illegal arrest and restraining (*See* A. 60). Some of said pleadings were filed by Eilbacher (*See* A. 75) who was a law partner of the presiding U.S. District Judge William C. Lee, and had arranged *ex parte* conferences for them with Judge Lee on April 27 and May 5, 1991 at 2412 Forest Park where Judge Lee got their outrageous and out-of-court misinformation such as Hoang harassed *"President Bush's daughter"* too, *"Hoang has repeatedly attempted to* avoid *being brought to trial", "Clearly, everyone involved in this case (except Hoang) wanted to end", "If Hoang desires to have his case concluded he need only cooperate with the court system, obey his bond conditions, keep away from Karen Richards, and cooperate with an attorney", etc.* and subsequently stated those in his final order of May 10, 1991.

On April 29, 1991, Hoang had, therefore, filed a Motion for Evidentiary Hearing.

On May 10, 1991, the District Court, by Judge Lee, denied Hoang's Motion for Evidentiary Hearing and Application for Writ of Habeas Corpus, and allowed them to continue with their competency proceedings as an option besides trying Hoang, *inter alia: "either continuing with competency proceedings or bringing Hoang to trial"* (*See* A. 3)

On May 16, 1991, Hoang filed a Motion for Certificate of Probable Cause and for Stay of State-Court Competency Proceedings Pending Appeal.

On May 17, 1991, the District Court, by Judge Lee, denied Motion for Certificate of Probable Cause and for Stay of State-Court Competency Proceedings Pending Appeal.

On May 24, 1991, Hoang filed a Notice of Appeal.

United States Court of Appeals

On May 31, 1991, Hoang filed Motions for Certificate of Probable Cause and for Stay of State-Court Competency Proceedings Pending Appeal, Motion for Release Pending Review of the Decision Failing to Release, and the Jurisdictional Statement pursuant to Circuit Rule 3(c).

On June 6, 1991, Arthur filed his Written Appearance on behalf of those Respondents, and his Jurisdictional Statement.

On June 17, 1991, The court of Appeals issued an order directing Hoang to file a Jurisdictional Statement pursuant to Circuit Rule 3(c) (*See* A. 2) which its own record indicated that Hoang already filed on

May 31, 1991 (See A. 76). That meant someone there who knew them did not forward Hoang's filings to any Circuit Judge there for consideration or ruling which was similar to what they did to his previous appeal to the Indiana Supreme Court (*See Page* 15, ¶ 2 *and* 3).

On June 25, 1991, Hoang had to re-file the Jurisdictional Statement along with said other motions.

On July 2, 1991, Hoang filed an Express Motion for Enforcement of Rule 23(a) of Federal Rules of Appeallate Procedure.

On July 10, 1991, Hoang filed Expedited Appeal Motions.

On July 24, 1991, Hoang filed a Supplemental Expedited Motion for Certificate of Probable cause.

On August 6, 1991, Hoang filed a Second Supplemental Expedited Motion for Certificate of Probable Cause, along with a letter to Chief Judge William J. Bauer complaining about none of the above motions had ever been ruled nor had they ever been forwarded to any Circuit Judge there for ruling or consideration such as the Jurisdictional Statement that Hoang had to file twice. But it did not make any difference.

On August 16, 1991, after reviewing only District Court's Order and their State-Court Files, the Court of Appeals denied Hoang's Petition for Certificate of Probable Cause for appeal (*See* A. 1).

DISPOSITION OF STATE CASES?

On July 26, 1991, they staged another competency hearing for the 1989 case in which their same psychiatrists, Fawvers and Heinemann, were brought in to perjure again that Hoang did not have the capacity to stand trial because of mentally ill like the last time (*Please see Page* 13 *to* 16, *and* A. 33 *to* 42) to find Hoang incompetent to stand trial, and ordered Hoang committed to a mental institution again (*See* A. 77).

On Sunday August 11, 1991, just before they could transport Hoang to a mental institution as Tubergen's order in the 1989 case (A. 77), and right after Forcum's releasing Hoang from the Allen County Jail for the No Bond 1987 case so they could transport him to a subhuman mental institution in Logansport, Hoang bailed himself out of the Allen County jail and has gone to hiding since then, to prepare this Petition for Writ of Certiorari, and before they knew what happened and issued a new warrant for his re-arrest.

Since then, they had searched Hoang's residences several times and threatened his relatives with arrests if they did not say where he was.

REASONS FOR GRANTING THE WRIT

1. REVIEW IS WARRANTED BECAUSE THE DISTRICT COURT'S DECISION OF ALLOWING THE RESPONDENTS TO CONTINUE WITH THEIR COMPETENCY PROCEEDINGS AS AN OPTION BESIDES TRYING THE ACCUSED IS UNCONSTITUTIONAL.

This issue has never been raised before this Court where the State, instead of the Defendant, has used the law that is designed to protect the senile or the mentally retarded defendant from prosecution (because he doesn't have enough intelligence to understand the nature of the charges filed against him, the court proceedings and the defense he might have by assisting in the preparation a defense) to avoid the trial. In this instant case, that law is IC 35-36-3-1 *et seq.* (*See* A. 34).

Sigler, while telling many local lawyers that Hoang was so amazing that every time they charged Hoang with something, Hoang could come up with some evidence that made it impossible for them to convict him, has falsely and viciously not only argued that Hoang did not have the capacity to stand trial but also brought their psychiatrists, Heinemann and Fawvers, to the court perjuring that Hoang suffered from many kinds of mental disorders, such as paranoid personality, persecutory delusion, etc., which incapacitated Hoang in the preparation of his defense and rendered Hoang incompetent to stand trial for the purpose of denying Hoang the jury trial (*See* P. 12 *to* 16 *and* A. 33 *to* 42).

The reason they labeled Hoang to be suffering from such paranoid personality disorder, persecutory delusional disorder, etc. was because of his invincible story supported by physical evidence which incriminated against them that they wanted to confine him to a mental institution until he was no longer *"mentally ill"*. That means until he changed his story and gave up those evidence which incriminated against them. Then, they might give him a trial only if he's represented by an attorney of their choice like Sutherlin or Wagoner who would present a defense like this:

> *[W]e would probably rely primarily upon the cross-examination of the witnesses, and Mr. Lieu Hoang would testify on his own defense.* (See A. 60 - P. 161)

According to a 1989 study of The American Bar Association, such inadequate defense of having no trial strategy, seeking no witnesses, and presenting no evidence are accounted for ninety (90) percent of the false convictions in which nearly forty (40) percent are reversed in appeals. But Hoang still did not have any trial even when he was represented by

such lawyers. They wanted Hoang to sign their proposed settlement agreement instead (*See* A. 61) because that was what Sigler originally agreed to do for Sims and the others and because Hoang was so pragmaticus that he could reverse the situation to win the case if he took the witness-stand like he had done in a 1988 case (02D02- 8805-CM-8996) that Sims and his deputies, Gevers and Dahlberg, tried by themselves with assistance form Eilbacher instead of using Sigler as their puppet special prosecutor.

Anyway, the District Court denied Hoang's Application for Writ of Habeas Corpus in which it was requested to order them to release him from the latest illegal restraint, to either try him or dismiss both 1987 and 1989 cases, and to direct the U.S. Attorney General to file an Application for Appointment of an Independent Counsel. Instead, the District Court gave them the following options, *inter alia:*

> *[E]ither continuing with competency proceedings or bringing Hoang to trial.* (See A. 3 - P. 64)

They, of course, took the option of continuing with their competency proceedings. Let's suppose the District Court's decision was impartial and was the only way to solve their dilemma of not having the evidence to try him, nor could he be intimidated into signing their proposed settlement agreement, it has violated his rights to trial guaranteed by the *Sixth Amendment* of the U.S. Constitution.

There are numerous precedent cases about many defendants who faked their mental incompetences to avoid the trials, but never ever before has a State faked the mental incompetence of the defendant for the purpose of not trying him, and confining him to a mental institution for the mentally retarded defendants until he changed his story.

So there is no case law presented here for consideration, but there are similar foreign precedent cases which happened in the Soviet Union, before Mikhail S. Gorbachev came to power, where the Communist Government used to confine many intellectuals there to Siberian mental institutions for criticizing Communism that the United States government has condemned such action as barbaric violations of human rights and civil rights. So, what will this Court do to stop their barbaric violation of Hoang's human rights and civil rights in this instant case?

The Court is, therefore, requested to decide the constitutionality of the District Court's decision, along with IC 35-36-3-1 *et seq.* and whether it was lawfully applicable to this instant case with respect to the *Fifth* and the *Sixth Amendments* of the U.S. Constitution.

2. REVIEW IS WARRANTED BECAUSE THE DISTRICT COURT'S DECISION VIOLATES 28 U.S.C. § 2243 & 2254.

3. REVIEW IS WARRANTED BECAUSE THE DISTRICT COURT'S DECISION CONFLICTS WITH THE DECISIONS OF THE COURT OF APPEALS FOR THE FIFTH AND THE NINTH CIRCUITS.

4. REVIEW IS WARRANTED BECAUSE THE DISTRICT COURT'S DECISION CONFLICTS WITH PRECEDENTS SET BY THIS COURT.

Rule to Show Cause, under 28 U.S.C. § 2243, required the Respondents to certify the true cause of detention in their return to Order to Show Cause. But both Attorneys for Respondents, Arthur and Feighner, did not certify the true cause nor did they even show any cause of detention at all in their Returns to Order to Show cause (*See* A. 73 *and* 74).

Instead, they moved to dismiss Hoang's Application for Writ of Habeas Corpus on the ground that Hoang had failed to exhaust available state court remedy in that he has not yet been tried. But was denied by the District Court because it has the jurisdiction, under 28 U.S.C. § 2241, to grant Writ of Habeas Corpus to petitioner in State custody who has not yet been tried, *Braden v. 30th Judicial Circuit Court of Kentucky,* 410 U.S. 484 (1973), especially since Hoang has fully availed himself of the "State machinery" in attempting to have the State commence trial on the pending charges against him and has thereby satisfied the exhaustion requirement pursuant to *Atkins v. State of Michigan,* 644 F.2d 543, 547 (6th Cir. 1981).

In that situation, the District Court must grant Hoang's Application for Writ of Habeas Corpus for the requested relief because such Returns to Order to Show Cause were insufficient to prevent granting of the writ, *Stretton v. Shaheen,* 176 F. 735 (5th Cir. 1910), and because this Rule-to-Show-Cause was designed to elicit responding directly to the factual allegations set forth in the application, *Gladden v. Gidley,* 337 F.2d 575 (9th Cir. 1964), pursuant to 28 U.S.C. § 2243 & 2254.

After they, by Arthur, submitted their State-Court Files consisting of only pleading papers, letters and reports. Many of which were altered and falsified (*See detail with exhibits and argument on Page* 32 *to* 36) and without any transcript of the proceedings, the District Court should have issued another order directing them to submit any and all transcripts of the proceedings including the September 12, 1990, Pre-Trial Conference for the 1989 case (*See* A. 60) which was a prelude for

the latest arrest and restraint for *"the full and complete State Court Record"* for ruling on Application for Writ of Habeas Corpus.

Hoang appended numerous exhibits including Appendix 66 to his Application for Writ of Habeas Corpus to persuade the District Court, under *Gilmore v. Lynch,* 319 F.Supp. 105 (N.D. Cal 1970) *Aff'd* 92 S.Ct. 250, that an evidentiary hearing was necessary. After U.S. District Judge Lee communicated *ex parte* with them especially Eilbacher who was his former law partner instead of conducting an evidentiary hearing pursuant to *Townsend v. Sain,* 372 U.S. 293 (1963) so Hoang could have the same opportunity to call witnesses and produce further evidence such as A. 67, 66, 61, 60, 50, 49, 48, etc. in support of his allegations of illegal arrest and restraint, Hoang filed Motion for Evidentiary hearing pursuant to *Townsend, supra.* But District Judge Lee denied both Evidentiary Hearing and Writ of Habeas Corpus.

This Court has set a precedent in *Townsend, supra* at 313 that *[A] federal court must grant an evidentiary hearing to a habeas applicant under the following circumstances, if:*

(1) *The merits of the factual dispute were not resolved in the state hearing:* Both Petitions for Writ of Habeas Corpus filed in State Court were summarily denied without any hearing to resolve the factual disputes (*See* A. 71 *and* 72).

(2) *The state factual determination is not fairly supported by the record as a whole:* The State factual determination was unfairly decided by summary ruling without a hearing. As for the record, please see page 32 to 36.

(3) *The fact-finding procedure employed by state court was not adequate to afford a full and fair hearing:* Again, no State Court hearing was ever held for said two Petitions, there was no fact-finding procedure. Let alone the full and fair!

(4) *There is a substantial allegation of newly discovered evidence:* Please see Appendix 60, 61, 66, and 67.

(5) *The material facts were not adequately developed at the state court hearing:* Again, no state court hearing was ever held for said two Petitions, and nothing could possibly be developed there.

(6) *For any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing:* Again, there was no fact hearing for said two Petitions. Let alone the full and fair!

So the District court's decision conflicts with precedent set by this Court not only in *Townsend, supra* but also in *Harris v. Nelson,* 394

U.S. 296 (1969) that required the District Court to grant evidentiary hearing upon appropriate request.

The District Court's subsequent decision of declining to issue a Certificate of Probable Cause for appeal also conflicts with precedent set by this Court in *Barefoot v. Estelle,* 463 U.S. 880 (1983) that required the lower courts to issue Certificate of Probable Cause where petitioner raised substantial issues of fact and/or law. So does the Court of Appeals for the Seventh Circuits's decision. But the Seventh Circuit may be excused as someone there did not forward Hoang's filing materials to it for consideration (*See* P. 26, ¶ 9 to P. 27, ¶ 1, *and* A. 2 & 76).

This Court also held in *Barefoot, supra* at 893 n. 4 that the petitioner must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further, so let's go to the next issues to see if the Chief Justice and the Associate Justices wouldn't debate any issue that District Judge Lee has resolved.

5. REVIEW IS WARRANTED BECAUSE THE DISTRICT COURT'S DECISION HAS BEEN BASED ON THE INCOMPLETE, FALSIFIED STATE-COURT RECORD AND OUT-OF-COURT MISINFORMATION.

6. REVIEW IS WARRANTED TO PRESERVE THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM FOR THE INTEREST OF JUSTICE WHERE STATE AUTHORITIES ARE ABUSED AND MIS-USED.

There was no way Sims could do such barbaric things to Hoang alone without assistance from local corrupt judges and prosecutor of the surrounding counties of Allen county. Those corrupt people were illegally and clumsily brought in his conspiracy as follows:

There was some evidence that Hoang did properly strike Tubergen from the panel for selection of a Special Judge pursuant to Rule 13 of IRCP, but they could still argued that he did not strike properly. So let's go straight to the evidence that they could not possibly deny like it's still illegal for them to forge the signature of the Clerk of Allen Superior Court, Connie L. Campbell, to install Tubergen as Special Judge for the 1989 case.

Notwithstanding Campbell's testimony about she did not select Tubergen, nor did she authorize anyone to select him as a Special Judge (*See* A. 59), the forged signature on the false entry (*See* A.57) does not

look anything like her genuine signature of either personally signed (*See* A. 58) or rubber stamped (*See* A. 68 *or* 69). But District Judge Lee, instead of recusing himself because one of them was his law partner, has ganged up with them to deny Hoang's Application for Writ of Habeas Corpus without an evidentiary hearing by lying for them on his May 10, 1991 final order, *inter alia*, as follow:

> *Although Hoang claims that Connie Campbell's entry of August 2 [sic], 1989 was a false entry with a forged signature, a careful inspection of the entry of that date reveals that it is proper. Although Campbell's signature looks a bit different from her signature on other papers, such as the bench warrants, this slight difference is obviously the result of the fact that Campbell personally signed the entry of August 2 [sic], 1989, and her other signatures are "rubber stamped" signatures. The court finds that Hoang has not presented any credible argument that either of the judges were illegally appointed.*
>
> (Please see A. 3 - P. 60)

Let's compare said three signatures to see how dishonest Judge Lee is:

This is the forged signature on the false entry. See A. 57

Connie L. Campbell, clk

~~JUDGE~~ Clerk Allen Circuit and Superior Courts

This is Campbell's genuine personally signed signature. See A. 58

Connie L. Campbell, clerk

Connie L. Campbell, Clerk

This is Campbell's rubber stamped signature. See A. 68 or 69

Connie L. Campbell

CLERK

Now, would the Chief Justice and the Associate Justices agree with District Judge Lee that those criminal conspirators should be allowed to confine Hoang to a mental institution until Hoang could no longer see that the signature on the entry appointing Tubergen as the Special Judge was a forged signature? And the following:

Their own record indicated that Forcum was illegally appointed as Special Judge for the 1987 case (*See* P. 10, ¶ 2). Likewise, there is documented evidence that Sigler's prosecutorial appointment papers under IC 33-14-1-6 for the 1987 case did not even exist until after Hoang brought this matter up on December 2, 1988. They then made those papers up and dated those papers back to the date those papers must be existing (*See* P. 8, ¶4) But they was so clumsy that they made the order appointing Sigler up as *Special Prosecutor of Adams County* (*See* A. 27 - P. 106) instead of *Allen County* where the crimes allegedly happened and as required. So, even if those papers weren't made up, it's still illegal for Sigler to prosecute Hoang for any crime allegedly happened in Allen County.

So let's go to the 1989 case in which Sims filed Petition for Special Prosecutor at the right time that was granted, and Sigler also filed his Oath for Special Prosecutor at the appropriate time but there has been no order appointing Sigler as a Special Prosecutor in between, and they could not make that up like the last time anymore (*See details on* P. 18, ¶ 2 *to* ¶ 5, *with* A. 52, 53 & 54). District Judge Lee, however, skipped that non-exist-State-Court Order Appointing Sigler as the Special Prosecutor for the 1989 case in his final order, *inter alia*, as follow:

> *... Similarly, the state court record for Cause No. 02D04-8905-CF-341 shows that Stephen Sims filed a Petition for Special Prosecutor in this case on May 1, 1989, which was granted by Judge Ryan on that same date. [✓]. On May 2, 1989, Daniel Sigler filed his oath and acceptance of the appointment.*
>
> *..... The court finds no evidence in the record that Sigler was improperly appointed.* (See A. 3 - P. 58-59)

This above [✓] mark shows where District Judge Lee has skipped Sigler's illegality of having no State-Court Order for Appointment as Special Prosecutor. Judge Lee also skipped anything that incriminated against them including their following motive that Sims and his deputies flipped out in their first Petition for Appointment of Special Prosecutor:

> *3. That said Lieu B. Hoang has previously filed a Disciplinary Action with the Supreme Court of the State of Indiana against the Prosecuting Attorney of Allen County and his staff.*
> (See A. 26 - P. 105, ¶ 3)

Instead, District Judge Lee stated their *"Karen Richards Pretense"* as the reason they went after Hoang that bad and used Sutherlin's misleading letters back-dated to June 28, 1990 and July 26, 1990 to deny Hoang's Application for Writ of Habeas Corpus, *inter alia*, this way:

> *The record shows that Sutherlin attempted to convince Hoang to settle this case and a settlement agreement was drawn up. However, the record also shows that Special Prosecutor Sigler did not respond to Sutherlin's proposed settlement terms. The record does not support the contention that Hoang was arrested because he wouldn't settle this case.* (See A. 3 - P. 62-63)

Now, which record did District Judge Lee mean? Their falsified files or the transcripts of the proceedings such as the September 12, 1990 Pre-Trial Conference for the 1989 case which they did not submit (*See* A. 60) and in which Sigler was the one who again proposed settlement terms that were immediately rejected by Hoang who was then threatened by Tubergen with arrest and confinement to a mental institution again if there was no settlement. And that's not all, Sigler even made the following remark because Hoang wouldn't settle this case:

SIGLER: *I think it should be stated on the record that, if the question ever arises, we are making sincere efforts to resolve this case short of trial, and we continue to do that, judge. I would like to think that we will be successful. There is no guarantee of that, but we are working on it.*

TUBERGEN: *I would urge both counsel to spend some time today if you would since you (Sutherlin) had to come all the way from Indianapolis, and discuss the matter.*

(Please see details on A. 60 - P. 160-163)

That was when they drafted their latest proposed settlement agreement (*See* A. 61) and kept threatening Hoang with arrest (*See* A. 66 & 67) if he didn't sign said agreement. So, even not considering their previous proposed settlement agreement on the status hearing of December 13, 1989, those letters of Sutherlin were evidently falsified right there for the sole purpose of denying Hoang his Writ of Habeas Corpus. District Judge Lee has further spread through out his May 10, 1991 Order the following the out-of-court misinformation and outrageous comments which he got from them during the two *ex parte* conferences: *"... President Bush's daughter ... "*, *"Hoang has repeatedly attempted to avoid being brought to trial"*, *"Clearly, everyone involved in this case (except Hoang) wanted it to end"*, etc. which not only lacked both legal and factual foundations but also had no common sense such

as they already dropped all charges for insufficient evidence if they wanted it to end, or they already tried Hoang if they had the evidence or the capability to convict him. That may be the reason District Judge Lee's Order denying Hoang's Writ of Habeas Corpus consisted of *"Background and Discussion"* (*See* A. 3) instead of *"Findings of Fact and Conclusions of Law"* as required by 28 U.S.C. § 2243 & 2254.

The Court of Appeals denied Hoang's Petition for Certificate of Probable Cause based on said District Court's order and their State-Court Files. And when Hoang called its Chief Judge William Bauer to complain, he was told that It did not believe the man whom It was speaking to was Hoang because the State-Court Record indicated that he couldn't speak English (*See* A. 33, P. 119, ¶ 1), that he does not have the intelligence to understand the proceedings, and that he was found incompetent to stand trial so It doubted that Hoang's *Pro se* Briefs were prepared by Hoang but by some experts who was behind Hoang to go after them. Since this matter is now pending before this Court, will this Court wait until seeing Hoang in person at the oral argument before deciding that he's mentally incompetent like they have been lying?

On the contrary to their lying that there is *"no law school there"*, Hoang was born in 1950 in Hanoi, North Vietnam. In 1955, his family move to Saigon, South Vietnam, where he grew up in a French educational system. He passed *Baccalauréat I* in 1966, *Baccalauréat II* in 1967, and attended University of Saigon, Faculty of Law where he received *Licence en Droit* (LLB) in 1971, *Maîtrise en Droit* (LLM) in 1973, and *Docteur en Droit* (LLD) in 1974. He was mainly a Professor of Criminal Law of the University of Saigon before reluctantly coming to the United States in 1975 as a refugee, and was naturalized as the U.S. Citizen in 1981.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

LIEU B. HOANG, *Pro se* Petitioner
1682 Hobson Rd.
Fort Wayne, Indiana 46805-4880
(219) 422-1631

No. _____

IN THE

Supreme Court of the United States

October Term, 1991

LIEU B. HOANG

Petitioner

V.

STEPHEN M. SIMS, DANIEL J. SIGLER,
JOHN W. FORCUM, DANE L. TUBERGEN
JOSEPH SQUADRITO, AND STATE OF INDIANA

Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

•

- APPENDIX -

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LIEU B. HOANG
Pro se Petitioner
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UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

August 16, 1991

Before

Hon. WILLIAM J. BAUER, Chief Judge

Hon. MICHAEL S. KANNE, Circuit Judge

Hon.

LIEU B. HOANG, Petitioner-Appellant, No. 91-2206 v. STEPHEN M. SIMS, DANIEL J. SIGLER, JOHN W. FORCUM, et al., Respondents-Appellees.	]]]]]]]]]	Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division. No. 91 C 43 William C. Lee, Judge

ORDER

Petitioner filed a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The District Court denied the petition and declined to issue a Certificate of Probable Cause.

Petitioner has now filed an application for a Certificate of Probable Cause. This Court has carefully reviewed the final order of the District Court and the record on appeal.

We find no substantial showing of the denial of a federal right; the petitioner has failed to demonstrate the issues raised are debatable among jurists, a court could resolve the issues differently, or the questions deserve further proceedings. *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983).

Accordingly, the request for a Certificate of Probable Cause is DENIED. In light of our disposition of this motion, petitioner's numerous other filings with this court are DENIED as moot.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

RULE TO SHOW CAUSE
CIRCUIT RULE 3 (c) JURISDICTIONAL STATEMENT

Dated: June 17, 1991
By the Court:

No. 91-2206

LIEU B. HOANG, Petitioner - Appellant
v.
STEPHEN M. SIMS, DANIEL J. SIGLER,
JOHN W. FORCUM, et al., Respondents - Appellees

TO: Lieu B. Hoang
ALLEN COUNTY JAIL
417 S. Calhoun Street
Fort Wayne, IN 46802

Appeal from the United States District Court for the
Northern District of Indiana, Fort Wayne Division
No. 91 C 43, Judge William C. Lee

Circuit Rule 3 (c) directs that the appellant must file and serve a jurisdictional statement, which meets the requirements of Circuit Rule 28(b), with the clerk of the district court at the time of the filing of the notice of appeal or with the clerk or this court within seven days of filing the notice or appeal.

Your Rule 3(c) jurisdictional statement has not been filed to date. Accordingly,

IT IS ORDERED that the appellant shall file this overdue jurisdictional statement with the clerk of this court within fourteen (14) days of the date of this order. Failure to do so will result in a one hundred dollar ($100.00) fine and/or dismissal of this appeal.

NOTE: Please caption document "CIRCUIT RULE 3(c) JURISDICTIONAL STATEMENT". The filing of a *"Jurisdictional Memorandum"* which may have been specifically ordered by the court does not satisfy your obligation under Circuit Rule 3(c).

cc: David A. Arthur
John O. Feighner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG,
Petitioner,
v.
STEPHEN M. SIMS,
DANIEL J. SIGLER,
JOHN W. FORCUM,
DANE L. TUBERGEN,
JOSEPH SQUADRITO, and
the STATE OF INDIANA,
Respondents.

CIVIL No. F 91-43

ORDER

This matter is before the court on petitioner's application for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. On March 26, 1991, the respondents filed a return to order to show cause, motion to dismiss, and motion to vacate order to file state court record. Petitioner responded to the respondents' motions on March 29, 1991.

On April 12, 1991, this court entered an order denying respondents' motion to dismiss and also denying respondents' motion to vacate order to file state court record. Respondents were further ordered to submit the full and complete state court record of the petitioner within ten days of the April 12, 1991 order. On April 25, 1991, the respondents filed the full and complete state court record.

On April 29, 1991, the petitioner filed a motion for evidentiary hearing, pursuant to *Townsend v. Sain*, 372 U.S. 293 (1963).

BACKGROUND

This case has rather unique and complicated factual background involving two state court criminal proceedings against Petitioner, Lieu B. Hoang. Thus a somewhat detailed summary of the events leading up to Hoang's federal habeas corpus petition is appropriate here[1].

1. Even with the following detailed summary the court wishes to note at the outset that numerous motions were filed in the two state court cases and this summary merely highlights some of the substantive motions that were filed. In addition to the motions discussed in this order, the state court was required to address discovery motions, motions by counsel to withdraw from representing Hoang, motions in limine, etc.

Cause No. 02D04-8709-CF-474

Cause No. 02D04-8709-CF-474, *State of Indiana v. Lieu B. Hoang*, was filed on September 21, 1987. Hoang was charged, by separate informations, with two counts of Intimidation in violation of I.C. 35-45-2-1. These two charges are Class D Felony charges. The information for Count I, signed by Ronald Lapp, a Detective with the Fort Wayne Police Department, and subscribed and sworn before Daniel J. Sigler, Special Prosecuting Attorney, recites:

> *Undersigned, being duly sworn upon oath, says that: On or about the 18th. day of September, 1987, in the County of Allen and in the State of Indiana, said Defendant, Lieu B. Hoang, did communicate to Robert Wright, a threat, to wit: to kill him, with the intent that said Robert Wright engage in conduct against his will, to wit: refrain from maintaining a relationship with Karen E. Richards, being contrary to the form of the statute in such case made and provided.*

The information for Count II is identical to the information for Count I except that in Count II the act of intimidation allegedly occurred on September 19, 1987.

Also on September 21, 1987, an affidavit for probable cause was filed and approved by Philip R. Thieme, Judge of the Allen Superior Court. This affidavit states that the affiant, Detective Ron Lapp, has been investigating the harassment of Allen County Deputy Prosecuting Attorney, Karen E. Richards since September 8, 1987. The alleged harassment involved repeated contacts from Lieu B. Hoang. Detective Lapp specifically verified, in part, as follows:

> *That on Monday, September 21, 1987, at approximately 10:00 AM, the undersigned was contacted by Karen E. Richards regarding an escalation of the above mentioned harassment. Ms. Richards described to the undersigned additional contacts by the defendant and the fact that the defendant had been in contact with a male friend by the name of Robert Wright.*
>
> *That according to Ms. Richards and Robert Wright, Lieu B. Hoang had communicated death threats to Mr. Wright on two occasions. The first occasion occurred on September 18, 1987, in the phone conversation to Mr. Wright's roommate, Brian Goshorn. At said time, Lieu B. Hoang requested Mr. Goshorn to communicate to Robert Wright that he should stop seeing Ms. Richards or that he, Lieu B. Hoang, would kill him.*
>
> *That on September 19, 1987, Lieu B. Hoang went to the YWCA*

on North Wells Street in Fort Wayne, Allen County Indiana where he confronted Robert Wright again, and again instructed Mr. Wright to stop seeing Ms. Richards or he, Lieu B. Hoang, would kill him.

Bond was set at $10,000 for each count. Defendant posted bond on September 21, 1987, and was released on various conditions, including that he "shall not associate with victims in any manner" and that he "shall not go or be within 1/2 mile of victims residences."

On September 25, 1987, defendant, pro se, filed *inter alia*, a motion to dismiss. On October 16, 1987, James R. Seely, Bail Bond Commissioner, authorized the change of Hoang's bond from "on bond" to "no bond" as a result of Hoang's violating his release conditions. This authorization was filed on October 19, 1987. On October 22, 1987, Attorney Linda Wagoner filed a written appearance and filed a verified petition for writ of habeas corpus. On October 23, 1987, a hearing was held on the writ of habeas corpus and bond was reinstated at the initial amount of $10,000 on each count. The bond was also amended to include the provision that the defendant was to have no contact or associating with Karen Richards.

On November 25, 1987, an initial hearing was held, defendant was informed of his rights, and defendant entered a preliminary plea of not guilty. After selection of Special Judge David L. Hanselman, Sr. (pursuant to defendant's motion), defendant's case was set for jury trial on July 20-21, 1988. On December 28, 1987, defendant, by counsel Linda M. Wagoner, filed a supplemental motion to dismiss. On June 29, 1988, defendant, by Attorney Wagoner, filed a motion for continuance of the trial date. Judge Hanselman granted this motion and trial was reset for January 18-19, 1989.

On October 20, 1988, defendant, pro se, filed an amended motion to dismiss. On December 2, 1988, defendant, pro se, filed a motion to dismiss for lack of jurisdiction and on January 3, 1989, defendant filed his memorandum of law in support of amended motion to dismiss. On January 10, 1989, the court heard arguments on defendant's December 2, 1988, motion to dismiss for lack of jurisdiction. Defendant's motion to dismiss was denied and the cause of action was removed from the trial calendar and a hearing on defendant's amended motion to dismiss was set for hearing on January 18 and 19, 1989.

On January 17, 1989, defendant, pro se, filed a motion to reconsider or to correct errors. On January 18, 1989, judge Hanselman continued the hearing on defendant's amended motion to dismiss until January 19, 1989 in order that judge Hanselman might attend judge Quinn's funeral

services. On January 19, 1989, the court held a hearing on defendant's amended motion to dismiss. The hearing was continued for further evidence on January 25, 1989. However, On January 25, 1989, defendant failed to appear at the hearing. Thus, Judge Hanselman continued the hearing until January 26, 1989. On January 26, the court heard evidence and the case was continued for further evidence on February 22, 1989.

On February 21, 1989, defendant, pro se, filed a motion in limine and on February 22, 1989, defendant, pro se, filed a supplement to amended motion to dismiss. The court held a hearing on pending motions and denied defendant's motion in limine. The case was continued to February 23, 1989 for further evidence. On February 23, 1989, the evidence was concluded and the court heard arguments. The court took all motions under advisement.

On February 24, 1989, Judge Hanselman denied the following motions: (1) defendant's motion to dismiss filed September 25, 1987; (2) defendant's supplemental motion to dismiss filed December 28, 1987; (3) defendant's amended motion to dismiss filed October 20, 1988; (4) defendant's motion to reconsider or to correct errors filed January 17, 1989; (5) defendant's motion to obtain voice samples filed February 7, 1989; and (6) defendant's supplement to amended motion to dismiss filed February 22, 1989.

On March 16, 1989, defendant, pro se, filed a motion to correct errors, to reconsider, or in the alternative, to certify the issues for interlocutory appeal. Judge Hanselman denied the motion after hearing defendant's argument. On March 22, 1989, defendant, pro se, filed a Praecipe for Interlocutory Appeal. On April 6, 1989, the Indiana Court of Appeals, Third District, ruled that:

> *[N]o relief can be granted on the appellant's petition for the reason that the trial court in its subsequent order of March 16, 1989, denied, inter alia, the defendant's motion to certify the issues for interlocutory appeal; the court further finds that the appellant's said petition and exhibits thereto contain scandalous and scurrilous allegations by reason of which said petition should be ordered struck from the records.*

On April 24, 1989, defendant filed a notice of paying bond in full, and motion for protective order. Defendant deposited a deed of his property with the Clerk of the Allen Circuit Court and apparently believed that by paying the bond in full he was no longer subject to the conditions of his bond release[2]. On April 28, 1989, the defendant was

2. Defendant's notice states in part: "Notice is also given that the previous bond and bond condition...is hereby void in favor of the above property or full cash security bond."

arrested on the roof of Karen Richard's porch where he was allegedly attempting to gain entry to her residence. Defendant was charged with two counts of Attempted Burglary, a Class B Felony, and one count of Resisting Law Enforcement, a Class D Felony[3]. On May 2, 1989 Bail Bond Commissioner James R. Seely filed a Bail Bond Change Authorization in which he authorized the change of defendant's bond from *"on bond"* to *"no bond"*.

On May 5, 1989, the State of Indiana by Daniel J. Sigler, Special Prosecuting Attorney filed a petition to revoke bond. This petition states in part:

> *4) That since April 10, 1989, and despite warnings to the contrary, defendant has continued his attempts to have contact with Ms. Richards, including April 21, 1989, when he was stopped by Fort Wayne Police after he drove past Ms. Richards home.*
>
> *5) During the week of April 24, 1989, he attempted by illegal and surreptitious means to obtain the unlisted telephone number of the said Ms. Richards.*
>
> *6) On April 28, 1989, the Defendant was arrested on the roof of Ms. Richard's porch attempting to gain entry to her residence and was charged with Class B Felony, Burglary, and Class D Felony, Resisting Law Enforcement.*

On May 5, 1989 the court held a hearing on the State of Indiana's petition to revoke bond. The court found that "the State has proved by clear and convincing proof that the Defendant Lieu B. Hoang violated a current condition of his release order by being found on the roof of Karen Richard's residence where he was apprehended and arrested by police officers." The court revoked Hoang's bond and ordered him held without bond. The court further denied defendant's motion for protective order.

On May 9, 1989, the defendant, by counsel Richard J. Thonert, filed a motion for bond requesting that the court set reasonable bond for the defendant or, in the alternative, schedule a hearing regarding defendant's eligibility for bond. On May 24, 1989, defendant, by counsel Linda M. Wagoner, filed a petition to be let to bail requesting the court to issue a writ of habeas corpus and to set immediate bail. On May 25, 1989, defendant , by counsel Linda M. Wagoner, filed a motion for speedy trial and on May 30, 1989, defendant, by counsel Linda M. Wagoner, filed a supplemental motion to be let to bail.

---

3. These charges were brought against Hoang as Cause No. 02D04-8905-CF-341, summarized *infra*.

On June 9, 1989, Judge Hanselman held a hearing on the various pending motions. After hearing arguments of counsel the court increased defendant's bail to $20,000 for Count I and $20,000 for Count II, and as a condition of bail ordered the defendant, *inter alia,* to have no contact by any means with any of the victims in this cause of action, to include Karen Richards. Also on June 9, 1989, Special Prosecutor Daniel J. Sigler filed a four count information against the defendant charging the defendant with four counts of Harassment, Class B Misdemeanor. This information charged that the defendant (on September 18, 1987, September 19, 1987, September 20, 1987, and October 13, 1987) made telephone calls to various persons, including Karen Richards, not intending any legitimate communication in violation of I.C. 35-45-2-2. On June 15, 1989, pursuant to Order for Release, defendant was released from custody after posting bond.

On June 26, 1989, defendant, by counsel Linda M. Wagoner, filed, *inter alia,* a motion to dismiss and a motion to release bail monies and to alter conditions of release. On July 7, 1989, defendant, pro se, filed, *inter alia,* a motion for recusal of Judge Hanselman. Motion for recusal was granted on this same date. Judge Forcum was selected as Special Judge and accepted jurisdiction of this cause on July 13, 1989. On this same date Judge Forcum set a pre-trial conference for August 9, 1989. This pre-trial conference was reset for September 8, 1989, due to the congestion of the court's calendar.

On August 16, 1989, the defendant, pro se, filed a motion for discharge. A hearing was held on this motion on September 8, 1989. The court ordered briefing from the parties regarding defendant's motion for discharge and set the matter for trial on November 27, 1989. On September 19, 1989, the State of Indiana, by Special Prosecutor Daniel J. Sigler, filed a brief in opposition to defendant's motion for discharge. On October 2, 1989, defendant, pro se, filed a brief in support of his motion for discharge. On October 11, 1989, Judge Forcum entered an order holding that the two Class D Felony Intimidation charges, Count I and Count II, filed September 21, 1987, should be dismissed for failure to timely try the defendant. The court further held that the defendant was not entitled to discharge of Counts III, IV, V, and VI, filed June 6, 1989, as the time to try the defendant on these charges had not yet run.

On October 23, 1989, the defendant, pro se, filed a motion to reconsider and amend order, or in the alternative to certify the order for interlocutory appeal. Defendant, pro se, filed a Praecipe for Interlocutory Appeal on November 9, 1989. On November 13, 1989, defendant, pro se, filed an application for withdrawing submission and

praecipe requesting that the Clerk withdraw the case from Judge Forcum and transfer the case to the Indiana Supreme Court for appointment of a new Special Judge, pursuant to Rule 53.1 of the Indiana Rules of Trial Procedure. Defendant's application was denied by the Clerk, Connie L. Campbell. On November 17, 1989, the court partially granted defendant's motion to release bail monies and denied defendant's motion insofar as it requested an alteration of bond conditions. The court also denied defendant's motion to reconsider or in alternative to certify for interlocutory appeal and denied defendant's motion to dismiss filed on June 26, 1989. The case remained set for trial on November 27, 1989, to begin with the parties present at 9:30 a.m. Voir dire was scheduled to begin on November 28, 1989 at 9:00 a.m.

On November 27, 1989, the court took up several pre-trial matters such as defendant's pro se motions regarding witnesses, evidence and instructions and the State's motion for protective order. These motions were ruled upon. On November 28, 1989, voir dire was to begin. However, defendant did not appear at 9:00 a.m. as scheduled and the court revoked the defendant's bond and ordered the Clerk to issue a bench warrant for the defendant's arrest with no bond set until further hearing. At 9:45 that morning the defendant appeared in court and was informed by the court that the jury had been discharged. The warrant was served on the defendant and the defendant was taken into custody. The court noted the congestion of the court's calendar and set trial for March 5, 1990, to begin at 9:00 a.m.

On December 1, 1989, defendant, pro se, filed a request for speedy trial and on December 13, 1989, the court held that the defendant was not entitled to a speedy trial because the delay and the defendant's current incarceration was caused by the defendant's own acts. However, the court set the case for trial on February 5, 1990, within the seventy-day speedy trial period. The court further set a hearing on the bond forfeiture for December 26, 1989. The defendant orally requested Special Judge John W. Forcum to recuse himself. The court denied defendant's motion.

On December 26, 1989, the court held a hearing on the issue of bond forfeiture. The defendant, pro se, filed, inter alia, a petition for writ of habeas corpus which the court took under advisement. On December 27, 1989, Judge Forcum entered an order denying defendant's writ of habeas corpus. In this order Judge Forcum carefully set forth his findings of fact and conclusions of law with respect to defendant's writ of habeas corpus and response to bond forfeiture. Judge Forcum's order is attached to this court's order as Appendix I.

On December 28, 1989, Judge Forcum entered an order whereby the

court, on its own motion pursuant to I.C. 35-36-3-1, set forth the court's grounds for believing that the defendant lacked the ability to understand the proceedings and assist in the preparation of his defense. The court set a hearing on defendant's comprehension to stand trial for January 26, 1990, and appointed two psychiatrists, Dr. Ludwig G. Heinemann and Dr. Jay D. Fawver, to examine the defendant and testify at the competency hearing. Judge Forcum's order of December 28, 1989, is attached to this court's order as Appendix II.

On January 16, 1990, defendant, pro se, filed a Praecipe for Habeas Corpus Appeal[4] and on January 25, 1990 defendant, pro se, filed, *inter alia,* a verified motion for an impartial special judge or an impartial judge pro tempore.

On January 26, 1990, the court conducted a hearing on the issue of defendant's capacity to stand trial and took the matter under advisement. The court also denied defendant's motion for change of judge. On January 31, 1990, Judge Forcum entered an order finding that defendant lacked capacity to stand trial and committed the defendant to the Department of Mental Health, State of indiana, to be confined in an appropriate psychiatric institution. Judge Forcum's order of January 31, 1990 is attached to this court's order as Appendix III. The defendant was transported to Logansport State Hospital on March 5, 1990.

On March 19, 1990, defendant, pro se, filed a petition for termination of unnecessary prychiatric treatments claiming that the medication he was being prescribed would make him retarted. Judge Forcum denied defendant's motion on March 23, 1990.

On April 3, 1990, defendant, pro se, filed a petition for appointment of special prosecutor. This petition was filed specifically with Judge Alfred Moellering of the Allen Superior Court because defendant believe Judge Moellering was the only judge in Allen County who remained impartial towards the defendant. Apparently this motion was not ruled upon because Judge Moellering was not the presiding judge in this case.

---

4. On May 2, 1990, the Clerk of the Allen Circuit Court received notice from the Indiana Court of Appeals, Third District, dated April 26, 1990, stating that: "Because Hoang seeks relief from the denial of his petition for writ of habeas corpus, we conclude that jurisdiction over this cause of action lies with the Indiana Supreme Court. . . . Hoang's appeal to this Court should be dismissed and it shall be so ordered."

On July 27, 1990, the Clerk of the Allen Circuit Court received notice fom the Indiana Court of Appeals, dated July 25, 1990, stating that: "Appellant's Verified Petition for Transferring the Cause to the Indiana Supreme Court for Review is hereby denied since appellant has notified the court that he has been released, thereby mooting this attempt at habeas corpus relief. Randall T. Shephard, Chief Justice."

On April 12, 1990, the Clerk of the Allen Circuit Court received notice from the Indiana Court of Appeals, dated April 9, 1990, stating that: "The Petition for Termination Psychiatric Treatment and to Release from the Department of Mental Health should be and the same hereby is denied. George B. Hoffman, Jr., Acting Chief Judge."

On May 18, 1990, Judge Forcum received correspondence from Jeffrey H. Smith, Ph.D., Superintendent of Logansport State Hospital, dated May 16, 1990. In this correspondence, Dr. Smith stated that:

> *By my signature below, I certify that according to the report filed by John L. Strefling, M.D., Forensic Psychiatrist, Mr. Lieu B. Hoang has attained the ability to understand the proceedings and assist in the preparation of his defense.*
>
> *As indicated in Dr. Strefling's report, Mr. Hoang is presently on medication(s) and this medication level should be maintained while awaiting trial.*

Dr. Strefling's psychiatric evaluation stated in part that:

> *The patient [Hoang] was seen and a discussion of his competency was held at a recent staffing. The patient demonstrated satisfactory knowledge of the charges against him, the consequences of those charges if convicted in a court of law and stated with some reluctance that he would fully cooperate with his counsel in his own defense. He is aware of legal proceedings and knowledgeable of the persons that could be involved in the court proceedings, namely witnesses, prosecuting attorney, defense attorney, jury, judge, and others. However, he has some paranoid interpretations of certain aspects of his case which might well prove disruptive if he acts as attorney pro se. This obstacle to competency would be circumvented if he elects to have his privately retained attorney conduct his defense.*

As a result of the defendant's comprehension to stand trial if represented by counsel, the court, on May 18, 1990, ordered that the defendant be transported from the Logansport State Hospital to the Allen County Jail on or before May 31, 1990.

On May 21, 1990, defendant, by counsel Linda M. Wagoner, filed a petition to let to bail. On June 8, 1990, Attorney Michael K. Sutherlin filed a written appearance on behalf of the defendant. Also on June 8, 1990, Judge Forcum held a hearing on defendant's petition. The court released the defendant on his own recognizance on the condition that he maintain a working relationship with his attorney of record, that he maintain notice of his whereabouts with his attorney, that he not violate

any State, Local or Federal law, that he not contact court personnel directly or indirectly. On July 7, 1990, Judge Forcum st trial of this case for December 13-14, 1990.

On October 19, 1990, Attorney Michael K. Sutherlin filed a Motion to Withdraw Appearance. Judge Forcum denied Attorney Sutherlin's motion on October 31, 1990, finding that "the Defendant's ability to maintain a working relationship with his attorney of record is a condition of his release on his own recognizance and a primary factor in the Defendant's competency to stand trial. If the Defendant and his attorney request a reconsideration of the Motion to Withdraw, the Court will also set a hearing on the Defendant's competency to stand trial and on Defendant's bail." On December 4, 1990, Attorney Sutherlin filed a Motion to Reconsider Court's Ruling Denying Request to Withdraw Appearance. The court set a hearing on the motion to reconsider on December 13, 1990. On December 13, 1990, defendant failed to appear at the hearing. The court took Attorney Sutherlin's motion to withdraw under advisement until after January 1, 1991.

On January 24, 1991, Judge Forcum granted Attorney Sutherlin's motion to withdraw, found that the defendant had violated the terms of his release (as defendant failed to maintain a working relationship with his attorney of record), and ordered the defendant's release on his own recognizance revoked. Judge Forcum further ordered a warrant for defendant's arrest with no bond set until further hearing. Defendant was subsequently arrested and placed in custody of Allen County Jail.

On February 1, 1991, defendant, pro se, filed a demand for speedy trial, on February 5, 1991, defendant, pro se, filed a petition for writ of habeas corpus, and on February 14, 1991, defendant, pro se, filed a request for bond. On February 15, 1991, Judge Forcum entered an order as follows: "Comes now the Court and denies defendant's Motion for Habeas Corpus as it is not in proper form, and does not accurately reflect the record in this cause. The Court sets a hearing on Defendant's Motion to Set Bond on March 14, 1991, at 10:00 a.m. At said hearing the Court will review the issue of the defendant's competency to stand trial."

On February 28, 1991, Hoang, pro se, filed a petition for Writ of Habeas Corpus with this Court and on March 8, 1991 this Court issued an order staying all State Court proceedings until this Court made a final ruling on Hoang's Federal Habeas Corpus petition.

Cause No. 02D04-8905-CF-341

Cause No. 02D04-8905-CF-341, *State of Indiana V. Lieu B. Hoang*, was filed on May 4, 1989. Hoang was charged, in a single information,

with two counts of Attempted Burglary, a Class B Felony, and with one count of Resisting Law Enforcement, a Class D Felony. This information is supported by two affidavits of Probable Cause. The first affidavit, dated April 29, 1989, signed by the arresting officer, Thomas Taylor of the Fort Wayne Police Department, and approved by Judge Alfred W. Moellering of the Allen Superior Court stated that:

> *On April 28th 1989, I responded to a call at 2421 Florida Avenue. The call was of a person on the 2nd floor porch attempting entry. Upon arrival I found the defendant (Hoang) hiding up against the house on the 2nd floor porch. A piece of wire was hooked on the inside screen door handle where it had been slid through the door in an attempt to open the door. There were also scratches on door edge were [sic] the wire had been worked through. The C/P Karen Richards had observed the defendant hiding on the back porch.*

The second affidavit, dated May 4, 1989 and signed by Detective Richard Stoner of Fort Wayne Police Department, stated in part that:

> *(1) He is a Detective with the City of Fort Wayne Police Department, had an occasion to investigate the matters herein set forth and has good cause to believe that the Defendant committed the offenses as alleged in the information.*
>
> *(2) That on May 1, 1989, he was assigned to investigate the attempted burglary of the Karen A. Richards residence located at 2421 Florida Drive, Fort Wayne, Allen County, Indiana, which occurred on April 28, 1989.*
>
> *(3) The investigating officers reported on said date a report of a prowler at 2421 Florida Drive was placed at the Fort Wayne Police Department and patrol officers were thereupon dispatch (sic) to the scene.*
>
> *(4) In responding to the call, the officer discovered a very short Vietnamese male pressed up against the house upon the roof of the sun porch on the second story just to the north of a doorway.*
>
> *(5) At said time and place, Officer Taylor of the Fort Wayne Police Department advised the male that he was under arrest for Criminal Trespass, grabbed his right wrist and advised him to place his hands behind his back. The male pulled away tugging the officer on to the roof with him and began struggling with him on the roof top. Two officers were required to subdue the subject causing them pain and minor injuries.*

* * *

(9) In investigating the scene, the officer discovered a piece of wire which had been inserted in the door and was hanging from the inside handle where it appeared to have been used for an attempted entry to the residence. There were also scratch marks on the door made by the wire and a pair of boots found on the porch. At the time the Defendant was taken into custody, he was in stocking feet.

(10) The victim in the case states the Defendant has followed her in the past on numerous occasions, knows her habits and knew she would be returning home late that evening. She believes that the defendant was attempting to lie and wait for her, at which time he would force his affections on her and confine her to her premises until she complied with his wishes.

On May 5, 1989 defendant appeared before the court and entered a preliminary plea of not guilty. Bond was set at $20,000 for each of the Attempted Burglary charges and at $10,000 for the charge of Resisting Law Enforcement. Also, on May 5, 1990, Judge John Surbeck recused himself from further proceedings in this case due to an acquaintance with the complaining party, Karen Richards.

On June 7, 1989 the court named Honorable Roger Cosbey as Special Judge in this Cause subject to qualification and acceptance. On June 15, 1989, pursuant to Order for Release, defendant was released from custody after posting bond. As a condition of bail, the defendant was ordered, *inter alia*, to have no contact whatever with witnesses in the case including Karen Richards. On June 26, 1989, Judge Cosbey declined jurisdiction in this case.

On August 2, 1989 the defendant, pro se, filed a motion to dismiss. On August 14, 1989, Judge Dane L. Tubergen assumed jurisdiction over this case and set a pre-trial conference on September 28, 1989. On August 16, 1989 defendant, pro se, filed a Motion for Certification to the Indiana Supreme Court for appointment of a Special Judge and on August 17, 1989 defendant, pro se, filed a supplemental Motion for Certification to the Indiana Supreme Court for appointment of a Special Judge. On August 23 [sic], 1989, Judge Tubergen denied both of defendant's motions.

On September 28, 1989 defendant, pro se, filed an application for a Special Judge and Praecipe. On this same date, Judge Tubergen held a hearing on the application and stated his belief that the application would not be well-taken by the Clerk when she acted upon the application and therefore the proceedings in this case would proceed as scheduled. Judge Tubergen further re-confirmed his oath of office and held

a hearing on defendant's objection to the Court's selection of Judge Dane Tubergen and Objection to Judge Tubergen on the Second Panel. Judge Tubergen denied defendant's objections, denied defendant's motions to dismiss, and also ruled on several other pending motions. The court further set the case for trial on February 26, 1990 at 9:00 a.m.

On October 6, 1989, the Clerk, Connie L. Campbell, gave notice to all parties that the case was transferred to Indiana Supreme Court for the appointment of a Special Judge. On November 15, 1989 the Clerk of the Allen Circuit Court received a notice from the Supreme Court of Indiana, dated November 13, 1989, stating that there had been no delay in this case and that: "IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED that jurisdiction of this cause continue with the Honorable Dane L. Tubergen, Special Judge of Allen Superior Court."

On November 15, 1989 defendant, pro se, filed a motion to dismiss for lack of jurisdiction. On November 16, 1989, the court considered defendant's motion, found that the court had already ruled on the issues in connection with defendant's earlier motions to dismiss, and accordingly denied the defendant's motion to dismiss for lack of jurisdiction. The court further found that the matter was not appropriate for interlocutory appeal and declined to certify the matter for appeal.

On November 29, 1989 defendant's surety surrendered defendant to the Court Bail Commissioner and requested that the Court discharge and release the surety from all obligations. On December 1, 1989, James R. Seely, Bail Bond Commissioner, filed a bail bond change authorization changing defendant's bond from "on bond" to "$50,000.00".

On January 4, 1990 defendant, pro se, filed a motion to dismiss or in the alternative to bar evidence. On January 5, 1989, Judge Tubergen held a pre-trial conference and denied defendant's motion. On February 7, 1990 Judge Tubergen noted for the record that Judge Forcum, Special Judge in Cause No. 02D04-9709-CF-474, had found that the defendant in that case, also defendant in this case, failed to have comprehension to stand trial. Accordingly Judge Tubergen continued the proceedings in this case and noted that the case would be reset for further proceedings following receipt by the court of certification that defendant had been released from the custody of the Indiana Department of Mental Health, with certification of his competency to stand trial.

On June 12, 1990, Judge Tubergen noted that the court had been informed that the defendant had been released by the Indiana Department of Mental Health for the purpose of trial in the Allen Superior Court, Cause No. 02D04-8609-CF-474, and accordingly set trial in this case for October 15, 1990.

On June 20, 1990, Attorney Michael K. Sutherlin filed a written appearance on behalf of the defendant. On July 26, 1990, the following letter from Attorney Sutherlin to Special Prosecutor Daniel Sigler, dated June 28, 1990, was filed as part of the record in this case:

Dear Dan:

As I indicated, I have entered an appearance on all of Lieu's pending criminal charges. It is my desire, and his, to resolve this in an amicable and satisfactory manner giving deference to the concerns of the prosecutor's office and the complaining witness. Nonetheless, Lieu is adamant in not pleading guilty to any of the charges, so that gives us little room to arrive at a solution. I believe a solution is possible, however, in view of the fact that Lieu has spent several months in jail or at Logansport or Richmond.

There is currently imposed upon Lieu, an order prohibiting him from having any contact with the complaining witness, as well as any other State's witness. He is also prohibited from contacting directly or indirectly the court staff or clerk's office. Violation of that order, according to the Judge, could result in his arrest and detention for having violated the terms and conditions of being released upon his own recognizance. In view of the fact that Lieu wishes to leave the State and relocate, probably in Texas, I would like to suggest that the matter be continued with Lieu signing a statement waiving his rights to a speedy trial. If he in fact moves out of the State and there is no further contact with the complaining witness, then the agreement would provide that the charges be dismissed without prejudice. If further assurance is needed as to his location, I can obtain an address of the relatives that he will be living with in Texas and ask that he periodically contact me from that locale. I would also recommend to Lieu that he sign a statement indicating that he will not file any civil actions against any public officials for acts relating to the prosecution of these criminal charges.

If you have any questions, feel free to contact my office. I hope that this appears to be an attractive solution to all parties concerned.

Sincerely,

/s/ Michael K. Sutherlin

Also on July 26, 1990, the following letter from Attorney Sutherlin to Special Prosecutor Daniel Sigler, dated July 23, 1990, was filed in

the record:

Dear Dan:

Some time ago I wrote you and have not had a response regarding our offer to settle in this matter. I received a notice recently from the court setting this matter for trial in December and would hope that this matter, if it is going to resolve, could be done so well before that date. I enclose the letter in case you didn't receive it the first time. Please contact me as soon as possible.

Sincerely,

/s/ Michael

On September 12, 1990, Judge Tubergen held a pre-trial conference with Attorney Sutherlin, the defendant, and Special Prosecutor Sigler all present. Judge Tubergen noted that this case remained set for trial commencing on October 15, 1990, at 9:00 A.M. On October 11, 1990, the Court consulted with Attorney Sutherlin as he had indicated to the court that he could not be prepared for trial as scheduled. Attorney Sutherlin orally moved the court for a continuance of the trial, which motion was granted. Judge Tubergen noted that a status conference was scheduled for November 15, 1990. On October 17, 1990, Attorney Sutherlin filed a motion to withdraw appearance, and on October 29, 1990, Judge Tubergen granted Attorney Sutherlin's motion to withdraw.

On November 15, 1990, Judge Tubergen held a status conference and defendant failed to appear. Judge Tubergen further set trial for February 5, 1991 and ordered the defendant to appear in the Allen Superior Court at the Office of the Law Clerk at 8:30 A.M. on December 14, 1990 for purposes of discovery conference and to report to the law clerk that he has received notice of the trial setting. On December 14, 1990, Nancy Gettinger, Law Clerk, wrote a letter to Judge Tubergen stating that, although she was in her office as early as 7:30 that morning, defendant did not show up. However, defendant did call the law clerk's office and spoke with Special Prosecutor Sigler informing him that he had been in the office at 8:15 A.M. and no one was there and that the police were following the defendant and thus the defendant could not come into the office again. Defendant agreed to call Sigler after Christmas and arrange for a time when they could meet regarding discovery. The law clerk informed Judge Tubergen that she was, in fact, in her office that morning and the defendant never showed up, contrary to his representations to Sigler.

On January 23, 1991, Judge Tubergen entered an order for the Clerk to immediately issue a bench warrant for defendant for failure to appear

on December 14, 1990 as ordered. The defendant was arrested on the outstanding warrant in Indianapolis on January 25, 1991 by Secret Service Agents who were investigating the defendant's attempts to contact President Bush's daughter. As of January 28, 1991 defendant has been held in the Allen County Jail awaiting a hearing.

On January 30, 1991, Judge Tubergen made the following entry:

The Court, having been made aware of the recent conduct of defendant and having personal knowledge of defendant's in-court conduct and having further been made aware of a determination of lack of comprehension to start [sic] trial in related proceedings, finds reasonable grounds to believe that the defendant lacks the ability to understand the proceedings and assist in his defense.

IT IS ORDERED THAT:

1. A hearing to determine whether defendant lacks the ability to understand the proceedings and assist in the preparation of his defense will be held on March 14, 1991, at 9:00 A.M.

2. Ludwig G. Heineman, M.D. and Jay D. Fawver, M.D., both psychiatrists, are appointed to examine the defendant, file report and testify as to whether defendant can understand the proceedings and assist in the preparation of his defense.

On February 1, 1991, defendant, pro se, filed a motion for speedy trial. On this same date, Judge Tubergen made an entry stating that: *"This cause will be set for trial following determination of Defendant's comprehension to stand trial."*

On February 5, 1991, defendant, pro se, filed a petition for Writ of Habeas Corpus and on that same date Judge Tubergen filed an entry stating that:

Defendant files pleading styled as Verified Petition for Writ of Habeas Corpus, however, said pleading appears to request immediate relief of discharge and the Court considers the same to be a Motion for Discharge. The Court finds that the factual allegations set forth in the motion do not accurately reflect the record in this cause. Defendant's motion for discharge is denied.

On February 14, 1991, defendant, pro se, filed a Praecipe for Habeas Corpus Appeal.

On February 15, 1991, the Court received a letter from Dr. Heinemann, dated February 12, 1991, stating that *"When Hoang was brought in for evaluation today, he refused to cooperate or even to enter my*

office." On March 5, 1991, the Court received a letter from Dr. Fawver, dated February 12, 1991, stating defendant would not cooperate with the interview, and thus, Dr. Fawver did not interview defendant.

On February 28, 1991, Hoang filed a petition for Writ of Habeas Corpus with this court and on March 8, 1991, this court issued an order staying all state court proceedings until this court made a final ruling on Hoang's federal habeas corpus petition.

DISCUSSION

In respondent's return to order to show cause, motion to dismiss, and motion to vacate order to file state court record, filed March 26, 1991, respondents argued that this action should be dismissed for the reason that petitioner has failed to exhaust available state court remedies, in that he has not yet been tried. Petitioner, however, argued that exhaustion principles do not apply in this case because petitioner is attempting to enforce the State's obligation to bring him promptly to trial. In this Court's order of April 12, 1991, denying respondents' Motion to Dismiss, the Court held that Hoang's Federal Writ of Habeas Corpus would not at that time be dismissed for failure to exhaust. The Court noted that Hoang had filed a petition for Writ of Habeas Corpus in each of his state cases and each writ was summarily denied. Hoang claimed that, due to actions of persons within the state court system, he was illegally blocked from proceeding any further by appeal to the Supreme Court of Indiana pursuant to Rule 4A(9) of the Indiana Rules of Appellate Procedure. Respondents did not address this issue in their brief in support of their Motion to Dismiss, thus this court requested the petitioner's state court record in order to determine, *inter alia,* the procedural status of the two state court cases.

As noted in the above summary of Cause No. 02D04-8709-CF-474, Hoang filed a petition for Writ of Habeas Corpus in that case on February 1, 1991, which was summarily denied by Judge Forcum on February 15, 1991. There is no evidence in the record indicating that Hoang attempted to appeal this adverse ruling to the Indiana Supreme Court.

As further noted in the above summary of Cause No. 02D04-8905-CF-341, Hoang filed a petition for Writ of Habeas Corpus in the case on February 1, 1991, which was summarily denied by Judge Tubergen on that same date. On February 14, 1991, Hoang filed a Praecipe for Habeas Corpus Appeal. However, in his petition to this Court, Hoang states that he was unable to appeal the state court order because the Court construed his Writ of Habeas Corpus as a motion for discharge, rendering Judge Tubergen's order of February 5, 1991 an interlocutory order, unappealable at this time without a certification from the state

trial court. In summary, it appears that Hoang, has in fact, failed to exhaust his state court remedies, at least with respect to Cause No. 02D04-8709-CF-474.

Nevertheless, this court is reluctant to stay Hoang's Federal Habeas Corpus proceeding until after he has exhausted his state court remedies with respect to Cause No. 02D04-8709-CF-474. The facts in the two state court cases are inextricably linked and it would be a waste of scarce judicial resources to split the cases and have separate habeas corpus proceedings at the State and Federal level. Also, as the lengthy record indicates, Hoang has a very litigious nature, and in the likely event his state court habeas petition is denied by the Indiana Supreme Court, Hoang will most certainly start proceedings anew in this court.

A review of the case law indicates that the exhaustion requirement in habeas corpus cases is not jurisdictional. *Rowell v. Oesterle*, 626 F.2d 437 (5th Cir. 1980). 28 U.S.C. §2241 establishes independent jurisdiction in the federal courts to consider pretrial habeas corpus petitions. *Atkins v. Michigan*, 644 F.2d 543 (6th Cir. 1981). Thus, this court has proper jurisdiction over Hoang's federal habeas corpus petition. Due to the unusual circumstances of this case, and in order to prevent any further delay, this court will accept jurisdiction, determine whether an evidentiary hearing is necessary, and if no hearing is necessary, decide the petition on its merits.

In *Townsend v. Sain*, 372 U.S. 293 (1963), the Supreme Court detailed the considerations governing the grant or denial of evidentiary hearings in federal habeas corpus proceedings. The Court stated:

> *We hold that a federal court must grant an evidentiary hearing to a habeas applicant under the following circumstances: If (1) the merits of the factual dispute where not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state-court hearing; or (5) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.*

372 U.S. at 313.

The initial burden of persuading a judge that an evidentiary hearing is necessary lies with the prisoner. *Gilmore v. Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *aff'd*, 92 S.Ct. 250. An evidentiary hearing is not required in a habeas corpus proceeding if the record conclusively shows

that petitioner is not entitled to relief. *Clark v. United States*, 606 F.2d 550 (5th Cir. 1979).

A review of Hoang's habeas corpus petition indicates (somewhat unclearly) that he is seeking release from custody on the following grounds; (1) that he was falsely arrested on September 21, 1987 for Intimidation and on April 28, 1989 for Attempted Burglary and Resisting Law Enforcement; (2) that Special Prosecutor Daniel Sigler was illegally appointed; (3) that Special Judges Forcum and Tubergen were illegally appointed; (4) that after his arrest, his trial dates were illegally continued; (5) that he was falsely arrested for Contempt of Court on November 28, 1989 and on January 25, 1991; (6) that he was illegally found to be incompetent to stand trial and sent to Logansport State Hospital, a mental institution; (7) that he was illegally forced to employ attorney Michael K. Sutherlin upon his release from Logansport State Hospital; and (8) that the state illegally tried to force him, by threatening to have him arrested and sent back to Logansport State Hospital, to enter into a settlement agreement in which he was to agree, *inter alia,* to give up his right to a speedy trial. The Court will now evaluate each of Hoang's contentions in light of the state court record.

First, Hoang claims that he was falsely arrested on September 21, 1987 and on April 28, 1989. As to his September 21, 1987 arrest, Hoang specifically claims that he was "set up" by Stephen Sims or persons acting on Sims' behalf and that all the evidence indicates that Sims and his "hitmen" intimidated Hoang and broke into his residence to destroy evidence. As to his April 28, 1989 arrest, Hoang claims that the police beat him unconscious and carried him up to the roof of Karen Richard's residence and then arrested him for Attempted Burglary when he regained consciousness. Hoang insists that he has recorded evidence proving his version of the arrests.

The state court record in Cause No. 02D04-8709-CF-474 reflects that Hoang was charged with sworn information alleging that Hoang threatened to kill Robert Wright, if he did not refrain from maintaining a relationship with Karen Richards. The information was supported by an Affidavit for Probable Cause, which was approved by Judge Thieme. The affidavit states that Detective Lapp had been investigating the harassment of Karen Richards since September 8, 1987 and that Detective Lapp believed that Hoang had committed the crimes he was being charged with. Similarly, in Cause No. 02D04-8905-CF-341, the information charging the defendant was supported by Affidavits of Probable Cause. Judge Moellering approved the arresting officer's affidavit, ruling that the State had probable cause to arrest Hoang. In both cases, the State had all it needed in order to legally arrest Hoang.

Hoang's allegation of false arrest is actually a protestation of innocence. However, an innocent person may be arrested if the State convinces a Judge that there is probable cause to believe that the person has committed a crime. The State then has the burden of proving that person's guilt beyond a reasonable doubt. Hoang's belief that he has evidence of a grand criminal conspiracy is mentioned in nearly every substantive motion he filed in the State Court. The respective State Court Judge in each of Hoang's cases held evidentiary hearings, sometimes lasting several days, on many of Hoang's motions. Hoang has had ample opportunity to present his evidence to the State Court. Consequently, the Court finds that as to the issue of the legality of Hoang's arrests, there is no need for an evidentiary hearing. Hoang has failed to persuade this Court that such a hearing is necessary. Hoang has not even alleged that the merits of any factual dispute was not resolved in the State Court hearing, or that he was in any way not afforded a full and fair hearing on his claims, or that any of the other *Townsend* factors are operative in this case. The record conclusively shows that Hoang is not entitled to habeas corpus relief on this issue.

Next, Hoang claims that Special Prosecutor Daniel Sigler was illegally appointed. The basis for this claim is Hoang's belief that Sigler did not have the proper appointment papers, that the State Court did not appoint anyone as Special Prosecutor, and that Stephen Sims illegally had Sigler file an "Unsworn Oath" as Special Prosecutor in this case. Hoang also vaguely alleges that various papers were smuggled into the file to make it appear that Sigler was properly appointed.

The State Court Record for Cause No. 02D04-8709-CF-474 shows that on September 3, 1987, Stephen Sims filed a Petition for Appointment of Special Prosecutor for the purpose of investigation and possible filing of criminal charges involving the alleged harassment of Deputy Prosecuting Attorney Karen E. Richards. Sims could not conduct the investigation himself because Karen Richards was his Deputy Prosecutor. Judge Ryan of the Allen Circuit Court granted Sim's petition and appointed Daniel J. Sigler, Prosecuting Attorney of Adams County, Indiana as Special Prosecutor. On September 11, 1987, Sigler filed his oath and acceptance of the September 3, 1987 appointment. Similarly, the State Court Record for Cause No. 02D04-8905-CF-341 shows that Stephen Sims filed a Petition for Special Prosecutor in this case on May 1, 1989 which was granted by Judge Ryan on that same date. On May 2, 1989, Daniel Sigler filed his oath and acceptance of the appointment.

The record further shows that Hoang presented his written arguments on this issue several times and that hearings were held on the

issue. In his motion for evidentiary hearing, Hoang asserts that "The Court could find from the State Court records, if such said records were true and complete, some traces as the evidence of their falsified records to illegally install... Daniel J. Sigler as ... Special Prosecutor for the purpose of conspiring to deny the Petitioner fair proceedings." The Court finds no evidence in the record that Sigler was improperly appointed. If Hoang had any evidence that Sigler was illegally appointed, he should have presented this evidence to the State Court. He does not claim that he did so and that the State Court determination on this issue is not fairly supported by the record as a whole. Nor does Hoang allege that he has newly discovered evidence or that there was any defect in the State Court hearings at which he presented his evidence on this issue. Consequently, the Court finds that the record conclusively shows that Hoang is not entitled to relief on this issue and no evidentiary hearing will be held on this issue.

Hoang also claims that Special Judges Forcum and Tubergen were illegally appointed. Hoang does not explain in what fashion Judge Forcum was allegedly illegally appointed to Cause No. 02D04-8709-CF-474. With respect to Judge Tubergen's appointment to Cause No. 02D04-8905-CF-341, Hoang claims that "they" made up a false entry with a false signature of the Clerk of Allen Superior Court, Connie L. Campbell.

The record in Cause No. 02D04-8709-CF-474 shows that defendant, by counsel Linda Wagoner, filed a motion for an out-of-county Judge on November 25, 1987, for the reason that the victim, Karen Richards, regularly practiced before the Allen County Judges. This motion was granted and the Court named a panel consisting of Judge Patricia McNagny of Whitley County, Judge David Hanselman of Wells County, and Judge Roger Cosbey of Noble County. On December 12, 1987, defendant by counsel struck Judge McNagny and Special Prosecutor Sigler struck Judge Cosbey. Judge Hanselman remained as the selected Special Judge and accepted jurisdiction on January 5, 1988. On July 6, 1989 defendant, pro se, filed a motion for recusal of Judge Hanselman which was granted on that same date. The Court then named a panel of three judges from which a second Special Judge would be selected: Judge John Forcum of Blackford County, Judge Tom D. Diller of Jay County, and Judge Jeffrey Heffelfinger of Huntington County. Defendant orally struck Judge Heffelfinger and the State struck Judge Diller, leaving Judge Forcum as the selection for Special Judge. Judge Forcum accepted jurisdiction on July 13, 1989.

With respect to Cause No 02D04-8905-CF-341, the State Court record shows that on May 5, 1989, Judge John Surbeck recused himself

from the case due to an acquaintance with Karen Richards. The Court named as a panel for selection of a Special Judge: Judge David Hanselman of Wells County, Judge Roger Cosbey of Noble County, and Judge Paul Cherry of DeKalb County. On May 25, 1989, defendant filed a notice of striking, striking Judge David Hanselman from the panel. On June 7, 1989, Connie L. Campbell, Clerk struck Judge Paul Cherry from the panel, pursuant to Indiana Trial Rule 79. As a result of striking, Judge Roger Cosbey was selected as Special Judge. However, on June 26, 1989, Judge Cosbey declined jurisdiction. Thus, the Court selected a second panel of judges naming Judge Dane L. Tubergen of Steuben County, Judge Jeffrey R. Heffelfinger of Huntington County, and Judge Howard Petersen of LaGrange County. On July 13, 1989, defendant filed an "Objection to Judge Tubergen on the Second Panel." In this objection defendant requested that a judge from the Indianapolis area be appointed by the Supreme Court of Indiana.

Defendant claims that on June 30, 1989, he struck Judge Tubergen from the panel by calling the Law Clerk and indicating that he wished Judge Tubergen to be struck. However, defendant did not file a Notice of Striking with the Court within the 14 day time period allowed by Indiana Trial Rule 79 (10). Thus, on August 2 [sic], 1989, Connie Campbell, Clerk, struck Judge Petersen and Judge Heffelfinger from the panel. Judge Tubergen, the remaining Judge, accepted jurisdiction on August 14, 1989.

Although Hoang claims that Connie Campbell's entry of August 2 [sic], 1989, was a false entry with a forged signature, a careful inspection of the entry of that date reveals that it is proper. Although Campbell's signature looks a bit different from her signature on other papers, such as the bench warrants, this slight difference is obviously the result of the fact that Campbell personally signed the entry of August 2 [sic], 1989, and her other signatures are "rubber stamped" signatures. The Court finds that Hoang has not presented any credible argument that either of the Judges were illegally appointed. The record conclusively shows that the panels of Judges were properly comprised of Judges from neighboring counties and Hoang was given the opportunity to strike one Judge. Hoang failed to timely strike Judge Tubergen from the panel and thus took the risk that Judge Tubergen would be selected as Special Judge in his case. Hoang has failed to convince the Court that an evidentiary hearing is necessary on this issue and the record conclusively shows that Hoang is not entitled to habeas corpus relief on the issue of the appointment of the Special Judges.

Next, Hoang contends that after his arrests, his trial dates were illegally continued. In Cause No. 02D04-8709-CF-474, Hoang was

originally charged, on September 21, 1987, with two counts of Intimidation. On June 9, 1989, the State charged Hoang with four counts of Harassment. On October 11, 1989, Judge Forcum dismissed the two Intimidation charges due to the State's failure to timely try Hoang. Thus any continuances of trial relating to the Intimidation charges are no longer relevant since Hoang has already been granted relief. Starting from June 9, 1989, the following delays/continuances in Hoang's trial occurred. On July 7, 1989 (four days before Hoang's trial was scheduled to begin) Hoang filed a motion for recusal of Judge Hanselman, which was granted. On July 13, 1989, Judge Forcum accepted jurisdiction and on September 8, 1989, he set the case for trial on November 27, 1989. On November 27, 1989, Judge Forcum took up pre-trial matters. On November 28, 1989, Hoang failed to appear on time and was arrested for Contempt of Court. Judge Forcum, noting calendar congestion, set the case for trial on February 5, 1990. However, on January 31, 1989, after holding a competency hearing, Judge Forcum found that Hoang was incompetent to stand trial. On May 16, 1989, the Court was informed that Hoang was competent to stand trial and his case was subsequently set for trial on December 13-14, 1990.

In early December, Hoang's Attorney, Michael Sutherlin, wished to withdraw from the case. Judge Forcum held a hearing on the motion to withdraw on December 13, 1990, but Hoang failed to appear. On January 24, 1991, Judge Forcum granted Sutherlin's motion to withdraw and issued a bench warrant for Hoang's arrest for Contempt for violation of Terms of Release. Hoang's Terms of Release specified that he was to maintain a working relationship with his attorney of record. On March 8, 1991, pursuant to Hoang's request, this court stayed all State Court proceedings.

In summary, there were five delays in Hoang's trial. The first was caused by Hoang's request for recusal of Judge Hanselman. The second delay was caused by Hoang's failure to appear in court on time. The third delay was the result of Judge Forcum's determination that Hoang was incompetent. The fourth delay occurred when Hoang insisted on firing his attorney and the last delay occurred as a result of Hoang's failure to comply with the conditions of his release. The record clearly supports the conclusion that Hoang has not been subjected to illegal delay of his trial. In fact, the record indicates that Hoang has repeatedly attempted to *avoid* being brought to trial.

Hoang has also alleged that he should be released from custody because he was illegally found to be incompetent on January 31, 1989. However, Hoang is not presently in custody as a result of Judge

Forcum's January 31, 1989 competency determination. Thus, this is not the proper forum for Hoang to seek redress for any alleged deficiencies in his competency hearing.

Hoang further claims that he was falsely arrested for Contempt of Court on November 28, 1989 and on January 25, 1991. The record reveals that on November 28, 1989, Hoang did not show up in court on time as ordered by Judge Forcum and was arrested for Contempt. He was subsequently released on bond. Since Hoang is not presently being held in custody for his arrest of November 28, 1989, this Court, acting pursuant to Habeas Corpus jurisdiction, could not offer Hoang any relief even if his arrest for Contempt was illegal.

However, Hoang is currently being held as a result of his arrest on January 25, 1991, and thus it is appropriate for the court to consider Hoang's arguments with respect to his arrest on that date. Imbedded in Hoang's argument that he was illegally arrested are his arguments that he was illegally forced to employ an attorney upon his release from Logansport State Hospital and that the State tried to force him to enter into a Settlement Agreement.

In Cause No. 02D04-8709-CF-474, the record clearly shows that Hoang was released from Logansport State Hospital as competent to stand trial on the condition that he employ an attorney to assist him in his defense. Impliedly, Hoang was not competent to stand trial as a pro se defendant. Thus, when Judge Forcum released Hoang on bond, it was proper for his bond to be conditioned on his maintaining a relationship with his attorney of record. When Hoang refused to cooperate with his attorney, Michael Sutherlin, and ordered Sutherlin to withdraw, Sutherlin complied and filed a motion to withdraw on October 19, 1990. This placed Judge Forcum in a dilemma. If he allowed Sutherlin to withdraw, Hoang could not be tried. Thus, Judge Forcum gave Hoang some time to try to develop a working relationship with Sutherlin. On December 13, 1990, a hearing was held on Sutherlin's motion. Hoang did not attend this hearing. Unable to reach any other solution, Judge Forcum, on January 24, 1991, granted Sutherlin's motion to withdraw and issued a Warrant for Hoang's arrest as Hoang had violated a term of his release by failing to maintain a working relationship with his attorney.

Hoang contends that he was arrested because he would not sign a Settlement Agreement agreeing to give up his right to a Speedy Trial and to not bring Civil actions against "The State of Indiana and complaining parties..."The record shows that Sutherlin attempted to convince Hoang to settle this case and a settlement agreement was

drawn up. However, the record also shows that Special Prosecutor Sigler did not respond to Sutherlin's proposed settlement terms. The record does not support the contention that Hoang was arrested because he wouldn't settle this case even though Hoang directs the Court to an undated handwritten note from Sutherlin to Hoang which states:

> *Lieu,*
>
> *Judge Forcum will issue a warrant for your arrest on Jan 1, 1991 if the matter is not settled.*
> *He has taken my motion to withdraw under advisement until then.*
>
> *I will be in Rm 314 until 10:45 AM before I return to Indpls. 428-7566*
>
> *Michael K. Sutherlin*

Hoang claims that his note is evidence that he was threatened with arrest if he continued to refuse to sign the proposed Settlement Agreement. However, the note does not refer to the Settlement Agreement and likely referred to the fact that the case had to be resolved in some way or Judge Forcum would have no choice but to arrest Hoang and start proceedings to have him committed. Hoang could have settled his differences with Sutherlin and proceeded to trial, he could have plea bargained with the prosecutor's office, or he could have entered into some other agreement with the prosecutor's office. Clearly, everyone involved in this case (except Hoang) wanted it to end. Hoang would have had his trial a long time ago if he had not insisted on doing the one thing Judge Forcum was not permitted to let him do: conduct his trial pro se.

In Cause No. 02D04-8905-341, the record shows that Hoang failed to appear for a discovery conference on December 14, 1990. Judge Tubergen issued a Warrant for Hoang's arrest for Contempt on January 23, 1991. Hoang makes much of the fact that Judge Tubergen waited over a month to issue the Warrant. However, this Court is not surprised that Judge Tubergen took some time to decide the best way to deal with Hoang, who had become a difficult problem in his court and was also involved in a related proceeding in which he was causing difficulties.

As the factual discussion in this order conclusively proves, the Allen County Superior Court has undertaken every effort imaginable to accommodate Hoang and to ensure that his case received the proper attention. The delay in this case is directly attributabe to Hoang's

actions. If Hoang desires to have his case concluded, he need only cooperate with the court system, obey his bond conditions, keep away from Karen Richards, and cooperate with an attorney.

CONCLUSION

For the foregoing reasons, Hoang's Motion for Evidentiary Hearing is hereby DENIED. Further, Hoang's Petition for Writ of Habeas Corpus is hereby DENIED. This Court's order of March 8, 1991 staying State Court proceedings is hereby LIFTED and the State Court is ordered to proceed with the orderly administration of this case, either continuing with competency proceedings or bringing Hoang to trial.

Enter: May 10, 1991.

/s/ William C. Lee

William C. Lee, Judge
United States District Court

NOTE:

- *Appendix I to this order is Appendix 32 to this Petition.*
- *Appendix II to this order is Appendix 33 to this Petition.*
- *Appendix III to this order is Appendix 44 to this Petition.*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG,
Petitioner,
v.

STEPHEN M. SIMS
DANIEL J. SIGLER,
JOHN W. FORCUM,
DANE L. TUBERGEN,
JOSEPH SQUADRITO, and
the STATE OF INDIANA,
Respondents.

CIVIL No. F 91-43

ORDER

This matter is before the court on petitioner's application for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. On March 26, 1991, the respondents filed a return to order to show cause, motion to dismiss, and motion to vacate order to file state court record. Petitioner responded to the respondents' motions on March 29, 1991.[1]

Petitioner is proceeding *pro se*. *Pro se* pleadings are to be liberally construed. *Haines v. Kerner*, 92 S.Ct. 594 (1972). The district court's

1. Petitioner also filed a "Motion to Order Allen County Sheriff to Deliver Prescriptional Medicines to Petitioner" on March 11, 1991, to which the Sheriff moved to dismiss on March 28, 1991. According to the affidavit of Vicki Stonebreaker, Director of the Medical Division of the Allen County Jail, arrangements have been made for petitioner's medication to be delivered to the petitioner in accordance with the policies and procedures of the Allen County Jail. Therefore, the court deems petitioner's motion to deliver prescriptional medicines to be moot.

On March 25, 1991, Petitioner filed a motion to strike the appearance of John Feighner for lack of service on the petitioner. Feighner filed his written appearance as attorney for defendant Joseph Squadrito, Sheriff of Allen County, on March 19, 1991. On March 22, 1991, the Clerk of the Court informed petitioner that Feighner had filed his written appearance. On March 28, 199, Feighner filed a certification of service of written appearance, in which he informed the court that his earlier written appearance had, as a result of scrivener's error, failed to list the petitioner. Upon discovering this omission, Feighner promptly forwarded a copy of the written appearance to the petitioner. The court deems petitioner's motion to strike to be moot.

On April 1, 1991, petitioner filed a "Motion to Order the U.S. Attorney General to file an Application for Appointment of an Independent Counsel." This motion will not be considered in this order because the briefing is not yet complete.

role is to ensure that the claims of *pro se* litigants are given *"fair and meaningful consideration." Matzker v. Herr*, 748 F.2d 1142, 1146 (7th Cir. 1984); *Caruth v. Pickney*, 683 F.2d 1044, 1050 (7th Cir. 1982). This court also recognizes that federal courts have historically exercised great tolerance to ensure that an impartial forum remains available to plaintiffs invoking the jurisdiction of the court without the guidance of trained counsel. *Pro se* motions and complaints such as petitioner's are held to less stringent pleading requirements; rigor in the examination of such motions, complaints and pleadings is inappropriate.

In their return to order to show cause, respondents admit that the petitioner is currently in the custody of the Sheriff of Allen County, Indiana, under warrants issued out of the Allen Superior Court in cause numbers 02D04-8709-CF-474 and 02D04-8905-CF-341. Petitioner is charged with four counts of harassment in the first case and with two counts of attempted burglary and one count of resisting arrest in the second case. On January 24, 1991, warrants were issued in each case on the basis of contempt of court and/or failure to appear.

The respondents admit that petitioner's *pro se* petition claims that there has been a violation of his right to speedy trial. Respondents further admit that petitioner has not yet been tried on either the 1987 or the 1989 case. Nevertheless, respondents argue that because petitioner has not yet been tried it is premature for this court to consider petitioner's writ for habeas corpus. The respondents request that this action be dismissed due to petitioner's failure to exhaust available and adequate state court remedies. Respondents further request this court to vacate its order of March 4, 1991 in which it ordered the respondents to submit to the court the full and complete state court record of the petitioner so that the court could determine whether an evidentiary hearing is necessary under *Townsend v. Sain*, 372 U.S. 293 (1963). The respondents maintain that the *"state court record is not necessary in order to determine that, as is conceded in the petition itself, there has not yet been a trial to determine the validity of the charges and the innocence or guilt of as to the charges pending against him."*

First, the court will address respondents' argument that petitioner has failed to exhaust his state court remedies. It is well recognized that the district courts have jurisdiction under 28 U.S.C. § 2241 to grant writs of habeas corpus to petitioners in state custody who have not yet been tried. *Braden v. 30th Judicial Circuit Court*, 93 S.Ct. 1123 (1973); *Parish v. Elrod*, 589 F.2d 327 (7th Cir. 1979). However, in the interest of comity, district courts will not assert jurisdiction when the petitioner has not exhausted his state remedies. *Parish, supra,* at 328-29. Furthermore, it is well-settled that a petitioner will be held to have

exhausted his state remedies prior to trial only in *"special circumstance". Braden, supra,* at 1123; *Parish, supra,* at 329.

The Supreme Court in *Braden* specifically stated that *"nothing we have said would permit the derailing of a pending state proceeding by an attempt to litigate constitutional defenses prematurely in federal court."* 93 S.Ct. at 1129. However, the Court's discussion indicates that there is a distinction between a petitioner who seeks to *"abort a state proceeding or to disrupt the orderly functioning of state judicial processes"* by litigating a speedy trial defense to a prosecution prior to trial and one who seeks only to enforce the state's obligation to bring him promptly to trial. *Brown v. Estelle,* 530 F.2d 1280, 1283 (5th Cir. 1976); See also *Dickerson v. Louisiana,* 816 F2d 220, 226 (5th Cir. 1987). As the Sixth Circuit Court of Appeals stated in *Atkins v. Michigan,* 644 F.2d 543, 547 (6th Cir. 1981):

> *[T]he speedy trial clause protects two related but distinct interests: the enforcement of the state's duty to provide a prompt trial and the protection of defendants from the prejudice that arises from a state's failure to carry out that duty... When enforcing the state's duty, then, the exhaustion requirement does not necessitate a trial on the merits, as it usually does when a petitioner is claiming that his ability to defend at trial has been prejudiced. To require a petitioner to await completion of a trial before he may challenge the state's refusal to grant him one would be incoherent. The exhaustion requirement, therefore, is satisfied when the petitioner has availed himself fully of the state machinery in attempting to have the state commence trial on the charges pending against him.*

With these considerations in mind, an examination of Hoang's petition and brief in response to respondents' motion to dismiss indicates that his petition cannot be dismissed at this stage for failure to exhaust. While the prayer for relief in Hoang's petition seeks to have the court order *"the above named respondents to release him from said illegal custody immediately"*, the body of Hoang's petition suggests that he seeks to force the state to commence trial. Hoang specifically requests the opportunity to put various persons on the witness stand in order to uncover the truth or falsity of the various allegations in his two cases. Furthermore, in his response to motion to dismiss, Hoang claims that *"Respondents have* **criminally** *violated Petitioner's constitutional rights to trial by, on January 24, 991, issuing two warrants for Petitioner's arrest to postpone again the jury trial scheduled for February 5, 1991... because the Petitioner repeatedly refused to sign an agreement with them to give [up] his constitutional rights to trial...."* (Emphasis in

original). Hoang then requests the court to *"deny the Respondents' Motion to dismiss and Motion to Vacate Order to File State Court Record, and for further just and proper relief."*

Thus, Hoang is clearly seeking to force the state to honor his constitutional right to have a trial on the charges pending against him. Consequently, this court cannot now dismiss Hoang's petition. Hoang has alleged violations of his right to a speedy trial and he has requested that the state be forced to commence trial. Furthermore, Hoang has alleged that he has attempted, within the state system, to enforce his right to a speedy trial. Specifically, Hoang has alleged that he filed a motion for speedy trial with the state court in late 1989 or early 1990, in Cause No. 02D04-8709-CF-474[2], after he was arrested for contempt of court and held without bond and without trial. Although the events leading up to Hoang's arrest in December, 1989 for contempt of court are unclear, and the arrest may have been the result of Hoang's misunderstanding of the date he was to appear in court, Hoang has alleged that he was not permitted to be tried on the pending charges but, rather, was sent to a mental institution for more than two months and then released from the Allen County Jail only on the condition that Hoang employ an attorney and subsequently agree to forego his right to trial and remove himself from the state for two years.

Hoang further alleges that on January 24, 1991, he was arrested for contempt of court in an attempt by the state to avoid taking him to trial. Hoang believed he was being illegally detained and filed two petitions, each titled *"Verified Petition for Writ of Habeas Corpus"*, in the Allen Superior Court on February 5, 1991. Hoang's first petition related to Cause No.02D04-8709-CF-474 and requested that he be released from custody, pursuant to I.C. 34-1-57-1 *et seq*, because he was not informed that he was required to appear in court and therefore could not legally be held in contempt. Hoang's second petition requested the same relief, but with respect to Cause No. 02D04-8905-CF-341. Hoang's first petition was summarily denied *"as it is not in proper form and does not accurately reflect the record in this cause."* Hoang's second petition was also summarily denied because *"the factual allegations set forth in the motion do not accurately reflect the record in this cause."* Thus, at this stage, it at least appears that Hoang has availed himself of the *"state machinery"* in attempting to have the state commence trail on the charges pending against him and has thereby satisfied the exhaustion requirement. Respondents' motion to dismiss

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2. It is unclear whether this motion for speedy trial requested trial on Cause No. 02D04-8905-CF-341as well as on Cause No. 02D04-8709-CF-474.

for failure to exhaust is denied.

Next addressing respondents' request to vacate order to file state court record, the court finds that it cannot rule on the merits of Hoang's habeas corpus petition without the benefit of reviewing Hoang's state court records in the two pending cases. Both state court judges denied Hoang's petitions for habeas corpus on the basis of the state court records. Therefore, the records must contain sufficient documentation to permit this court to determine whether there is any merit to Hoang's contentions that he has been denied his constitutional rights. Furthermore, the evidence in the records will enable the court to more adequately determine whether Hoang has failed to exhaust his available state court remedies. Consequently, respondent's motion to vacate order to file state court record is denied.

CONCLUSION

For the foregoing reasons, respondents' motion to dismiss petitioner's writ of habeas corpus and respondents' motion to vacate order to file state court record are both hereby DENIED. Respondents are hereby ORDERED to submit to this court the full and complete state court record of the petitioner within ten (10) days of this order.

Enter: April 12, 1991.

/s/ *William C. Lee*

William C. Lee, Judge
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG
Petitioner,
v.
STEPHEN M. SIMS, ET AL.,
Respondents.

CAUSE No. F 91-43

O R D E R

This matter is before the court on petitioner's Motion for Preliminary Ruling on Writ of Habeas Corpus and Motion for Stay of State Proceedings filed on March 6, 1991. In his Motion for Preliminary Ruling on Writ of Habeas Corpus, the petitioner takes issue with this court's order that respondents have thirty (30) days within which to answer the order to show cause. The Court clarifies our first order, dated March 4, 1991, in that the court determined the time to respond pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts[1], rather than within the three (3) days required under 28 U.S.C. § 2243. *See Kramer v. Jenkins*, 108 F.R.D. 429 (D.C. Ill. 1985). As explained in the Advisory Committee Note to Rule 4 --

> *Under § 2243, the respondent must make a return within three days after being so ordered, with additional time of up to forty days allowed under F.R.Civ.P. 81(a)(2), for good cause. In view of the widespread state of work overload in prosecutors' offices (see e.g.* Allen v. Perini, *424 F.2d 134, 141 (6th Cir. 1970)), additional time is granted in some jurisdictions as a matter of course. Rule 4 which contains no fixed time requirement gives the court the discretion to take into account various factors such as the respondent's workload and the availability of transcripts before determining a time limit within which an answer can be made.*

Furthermore, it has been a long standing tradition in the Fort Wayne division, as well as all other divisions within the Northern District, to

1. Rule 4 is prescribed pursuant to section 2072 of Title 28, United States Code, and 3771 and 3772 of Title 18, United States Court as amended.

grant respondents thirty (30) days within which to answer. This practice is founded on the impracticability of responding in any time less than thirty (30) days. Accordingly, the petitioner's motion for preliminary order directing the respondents to immediately release him pending this court's final ruling on his writ of habeas corpus is DENIED. In light of the peculiar circumstances in this case, the court will not look with favor upon a request to extend the time in which the respondents have to answer.

With respect to the petitioner's Motion for Stay of State Proceedings, the motion is hereby GRANTED. An adverse ruling on the March 14, 1991 Competency Hearing would unduly complicate this court's review of petitioner's alleged illegal restraint and the court could then be confronted with having to review the ruling of the Competency Hearing. Therefore, pursuant to Section 2251 of Title 28, United States Code, all state proceeding are stayed until this court has made a final ruling on petitioner's writ of habeas corpus.

Enter: March 8, 1991.

/s/ *William C. Lee*

William C. Lee, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG

Petitioner,

V.

STEPHEN M. SIMS,
DANIEL J. SIGLER,
JOHN W. FORCUM,
DANE L. TUBERGEN,
JOSEPH SQUADRITO,
STATE OF INDIANA

Respondents

CIVIL No. F 91-00043

ORDER

The petitioner having filed a petition for a Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 2254, it is now the order of this court that the respondent(s) is given thirty (30) days within which to show cause why this court should not assume jurisdiction over this case and grant the requested relief.

Entered this 4th day of March, 1991.

/s/ William C. Lee

United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG

vs.

STEPHEN M. SIMS,
DANIEL J. SIGLER,
JOHN W. FORCUM,
DANE L. TUBERGEN,
JOSEPH SQUADRITO,
STATE OF INDIANA

CIVIL No. F 91- 00043

ORDER

In order to determine whether an evidentiary hearing is necessary under *Townsend v. Sain*, 372 U.S. 293 (1963), It is ORDERED that the defendant(s) shall submit to this Court the full and complete state court record of the petitioner within thirty (30) days of this order.

Entered: March 4, 1991.

/s/ William C. Lee

William C. Lee, Judge
United States District Court

THE AUGUST 25, 1987 TELEPHONE CONVERSATION OF SHELDON BRESKOW AND LIEU B. HOANG

* * * * *

(Mr. Sheldon Breskow was the Executive Secretary of Indiana Supreme Court Disciplinary Commission)

* * * * *

OPERATOR: Supreme Court Disciplinary Commission.

HOANG: Yes, could I speak to Mr. Breskow, Please?

OPERATOR: Ah... Yes sir, hold on.

. . . . . .

BREKOW: This is Sheldon Breskow.

HOANG: Mr. Breskow?

BRESKOW: Yes.

HOANG: This is Lieu Hoang.

BRESKOW: Yes.

HOANG: Hi. How are you today?

BRESKOW: Good, sir.

HOANG: Good. I've just received your letter, you sent me on --- on last Friday.

BRESKOW: Yes.

HOANG: And the reason I am calling you is because I am ah...

BRESKOW: Well, I understand why you're calling me. Because you don't agree with it.

HOANG: Ah... well.

BRESKOW: And I wouldn't expect you to. Ah.. The Disciplinary Commission didn't see anything in the materials you finished to change its mind that it does not have a case which it could prosecute.

HOANG: Oh well, *(Chuckling)* How come?

BRESKOW: *(Sigh)* They don't --- And I will say this to you that we don't have the facility or the investigation staff or trial staff to make it good, to fill in gaps that you have not

filled in. And so... ah... if you have anything at all to present, it would have to be the major investigative office like the Justice Department or like the United States Attorney's Office for the Northern District of Indiana. We are not able to show the conspiracy based on the evidence that you supplied.

HOANG: Oh really.

BRESKOW: Maybe there was a conspiracy.

HOANG: Now, wait wait wait. Did you say maybe?

BRESKOW: Yes, there was. Some big investigative agency is going to have to put that together.

HOANG: Needn't be, huh?

BRESKOW: Let me tell you this. I am not telling you that you have the matter for the Justice Department.

HOANG: So there -- there is nothing your office can do anymore, right?

BRESKOW: We're not doing anything with it.

HOANG: But I'll have to come to the Justice Department or ---

BRESKOW: I am not saying that you have to do anything. You --- Do you have a lawyer currently?

HOANG: I am sorry?

BRESKOW: Do you have a lawyer now?

HOANG: I do have a lawyer currently but what do you mean?

BRESHOW: Talk it over with your lawyer?

HOANG: Huh?

BRESKOW: You ought to talk to a lawyer about it.

HOANG: Should --- I should talk to a lawyer first about that?

BRESKOW: Yes.

HOANG: Why should I need any advice for how to be a corrupt person, you know?

BRESKOW: Pardon me?

HOANG: Well *(Chuckling)*, if-- if I ask any lawyer about this like Tom Jones for example, he would tell me to get the

money and forget about his. Do you think I should forget about this?

BRESKOW: Well!

HOANG: You know well that I am not a corrupt person. I would never let them go even for a million dollars or even for a billion dollars so why should I need any advice from them. What about yours?

BRESKOW: Well, I --- you know, I --- I can't give you legal advice, Mr. Hoang. I can't tell you where to go or who to speak with.

HOANG: Okay. Okay. I think I know what you mean now, ah.. but let me ask you another question. Ah... does anyone in your office know them, those respondents?

BRESKOW: I can't tell you that. Ah... you mean know --- know them in a professional way or know them what?

HOANG: Ah...

BRESKOW: If you are in --- indicating that if there is any close relationship between the respondents any anybody here, the answer is no.

HOANG: What about the Commission. There are twelve members on the Commission, I am sure some of them come from this area, right?

BRESKOW: Well, let me tell you something, Mr. Hoang. I know what you're s--- the implication of what you're saying, and --- and you know that is --- that I --- I resent the implication.

HOANG: Yes.

BRESKOW: Alright, sir?

HOANG: Okay.

BRESKOW: Thank you.

HOANG: Bye-bye.

BRESKOW: Bye.

(Noise cames from Mr. Breskow hanging up his telephone)

HOANG: *(Mumbling)* Unbelievable!

(END OF RECORDING)

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG

Petitioner

vs.

STEPHEN M. SIMS, et al.

Respondents

CAUSE No. F 91-00043

MOTION TO ORDER THE U.S. ATTORNEY GENERAL TO FILE AN APPLICATION FOR APPOINTMENT OF AN INDEPENDENT COUNSEL

In the interest of justice and to preserve the integrity of the criminal justice system, the Petitioner, pursuant to *Nathan v. U.S. Attorney General*, 557 F.Supp 1186 (DC Dist. Col. 1983) *later proceeding* 563 F.Supp 815 (DC Dist. Col.) *reversed but on other grounds* 237 App. DC 364, 737 F.2d 1069, and *North v. Walsh,* 656 F.Supp 414 (DC Dist. Col. 1987), respectfully moves the Court to issue an order directing the United States Attorney General, the Honorable Dick Thornburgh, to file an Application for Appointment of an Independent Counsel under Title 28 U.S.C. § 591(c) and 592(c) or to show cause why those criminal conspirators should not be prosecuted and if they are immune from prosecution. In support of this motion, the Petitioner would like to present to the court the following:

1. That - as the Court is aware from Petitioner's pending Writ of Habeas Corpus filed to open this cause along with its enclosed factual evidence of the latest incident happened on January 24, 1991 when those criminal conspirators have again criminally violated Petitioner's constitutional rights to trial by illegally issuing warrants for Petitioner's arrest for the so-called *"Contempt of Court for Failure to Appear"* just because Petitioner had proceeded to trial instead of signing an agreement with them to give up his constitutional rights to trial and to leave the state so Allen County Prosecutor Stephen M. Sims will be able to run for the United States Congress again without fearing that his criminal activities and corruptions be exposed to the media by the Petitioner that he has to withdraw his candidacy like the last time - an Independent Counsel should be appointed to conduct a grand jury

investigation of their violations of Title 18 U.S.C. Section 241 & 242 and other federal statutes arising from not only this latest incident but also all other incidents in a series of incidents happened in the last six (6) years as defined by the statute of limitations for felony violations of civil rights, and of the violations of conflicts of interest for appearances of impropriety by some ranking officials of the Department of Justice, possibly for obstructions of justice, in protecting them from being prosecuted. (Please see detail on paragraph 4(b) and 7).

2. That the United States District Court has the jurisdiction (Please see *Nathan v. U.S. Attorney General*) to review the United States Attorney General's refusal, on Petitioner's request, to file an Application for Appointment of an Independent Counsel, and order the Attorney General to do so where Petitioner had supplied the Attorney General with the information that warranted an Independent Counsel to conduct a grand jury investigation. And that the separation of powers doctrine is not violated (Please see *North v. Walsh*) where action is not ripe for adjudication since those Respondents and their criminal co-conspirators have not suffered sufficient injury, if any, to warrant Court's intervention, and where the sole issue raised by mandamus action is whether the information is sufficient to trigger preliminary investigation Petitioners' contend is required by Ethics in Government Act, adjudication is not precluded by political question doctrine under *Dellums v. Smith,* 573 F.Supp 1489 (ND Cal. 1983) *motion denied* (ND Cal.) 577 F.Supp 1449, *stay denied* 577 F.Supp 1456 (ND Cal.) *but was later reversed* 797 F.2d 817 (CA 9 Cal.). Furthermore, unlike in both *Nathan* and *Dellums*, the Attorney General is neither Respondent nor Defendant in this case but a third or non-party who simply has the duty to comply with Section 591(c) & 592(c), so the issue of whether a private citizen has standing to sue the U.S. Attorney General under Ethics in Government Act is therefore moot.

3. That, just like *Nathan*, on early December 1990, the Petitioner came to the United States Attorney General's office and supplied him through his confidential assistant the information that warranted an Independent Counsel to conduct a grand jury investigation. But unlike *Nathan* in which the information was just a group of disorganized evidence, the information that the Petitioner supplied the Attorney General consisting of a seventy-two (72) page-trial-ready-preparatory note along with more than two hundred (200) pieces of evidence already marked as Governmental Exhibits to be presented to the grand jury and trial jury which are more than enough for not just to indict but also to convict everyone of those Respondents and their criminal co-conspirators for conspiracy to violate the rights of citizens under Section 241

and 242 of Title 18 U.S.C. along with perjuries, destructions of evidence, obstructions of justice, wire and mail frauds, and conflicts of interest arising out from a series of incidents (not counting this latest incident which resulted this pending action for Writ of Habeas Corpus) happened in the last six (6) years such as intimi-dations, attempted murders, illegal break-ins, destructions of evidence, witness tampering, attempted jury tampering, and illegal confined the Petitioner to their subhuman mental institution just like the way the Communist Government of the Soviet Union, before Mikhail S. Gorbachev came to power, used to confine many intellectuals there to Siberian mental institutions for criticizing communism that the U.S. Government has condemned such actions as barbaric acts of civil and human rights violations. Those Respondents and their criminal co-conspirators are not the *Ku Klux Klan* and the *American Nazi Party* in *Nathan* but what they have done as described above were far worse than those, and said more than two hundred (200) pieces of evidence were positive, conclusive and were assembled in a technique that, at those criminal conspirators' trial, there would be said more than two hundred (200) pieces evidence's story against their story instead of the Petitioner's story against their story so their convictions will be virtually inevitable. And that's not counting the *"reserved evidence"* to impeach them for perjuries.

4. That on said early December 1990 when the Petitioner supplied the Attorney General with said seventy-two (72) page-trial-ready-preparatory note along with more than two hundred (200) pieces of evidence, he specifically requested the Attorney General to get an Independent Counsel for the cause pursuant to Section 591(c) and 592(c) of Title 28 U.S.C. because the prosecution of those criminal conspirators by the United States Attorney's Office for the Northern District of Indiana or by the Civil Rights Division of the Department of Justice would result in the personal conflicts of Interest as follows, that:

(a) As early as 1987, the United States Attorney's Office for the Northern District of Indiana, by Assistant U. S. Attorney David H. Miller, and the Petitioner had already had a plan to convene a Federal Grand Jury to indict Sims and his criminal co-conspirators. But Miller then - under pressures of his local lawyer-friends who were also Sims' friends, one of them was his predecessor - kept rescheduling the meeting, and by late January 1988, Miller had canceled the plan as he disqualified the United States Attorney's Office for Northern District of Indiana from the case for *"appearance of a conflict of interest"* and on early February 1988, referred it to the Civil Rights Division, Criminal Section of the Department of Justice. During that time, Sims also used some alleged drug-dealers of North-Eastern Indiana as the pawns to

approach Miller with a contrived plan of *"Joint State and Federal Investigation"* of said alleged drug-dealers to make it a conflict of interest for the United States Attorney's Office for the Northern District of Indiana to prosecute him and his criminal co-conspirators. As a result, Miller also stated on his referral letter of February 2, 1988 about said *"Joint State and Federal Investigation"* of those alleged drug-dealers as the *"appearance of a conflict of interest"* for his United States Attorney's Office to prosecute Sims and Sims' criminal co-conspirators.

(b) After said Miller's referral letter, Sims and his Deputy Prosecutors, Robert W. Gevers and Thomas Dahlberg, had tried to scare the Petitioner with some ranking officials of the Department of Justice, such as Stephen Goldstein who was recently transferred to the Veterans Administration and Daniel Bell who has been the Deputy Chief of the Civil Rights Division, Criminal Section, as the persons who would protect them from being prosecuted by the Department of Justice. Sims and his said deputy prosecutors then even named said ranking officials of the Department of Justice as their witnesses to testify against the Petitioner about the Petitioner's *"records with the Department of Justice"* during a criminal trial on that summer (1988). The Petitioner did not have any such *"records with the Department of Justice"* and none of those officials of the Department of Justice had actually shown up to *"lie with them"* as their plan. But Daniel Bell has violated the conflict of interest for appearance of impropriety for failing to disqualify himself and his Civil Rights Division from the case and referred it to the Attorney General's Office for appointment of an Independent Counsel or at least referred it to a different division, section, or personnel who did not personally know them like Assistant U.S. Attorney Miller did. Instead, Bell has intentionally and purposely held on this case for years (since then) to (just like those criminal conspirators bragged) protect them from being prosecuted by the Department of Justice by simply doing nothing with the following childish and ridiculous excuses either directly from Bell or from the personnel who worked for or under him: *"Wait until their state proceedings are over." "Still under review... we have not found any serious violation yet." "It's not a serious violation because you haven't died yet." "The statute of limitation is over, you should have come to us sooner." "What are their names again? We can't prosecute unknown individuals." "You don't have anything new but the same old kind of incidents that we've heard for years,"* etc. Anyway, Bell must have done that intentionally and purposely as the evidence indicated that he once, on last spring (1990), closed the file for this case just after those criminal conspirators illegally sent the Petitioner to their subhuman mental institution that they thought the Petitioner would be illegally confined

there for years, if not for the rest of his life. Bell now blames said closing file on an attorney who worked for or under him.

(c) That to get the case proceeded, the Petitioner moved the case to different division and section of the Department of Justice like the *Public Integrity, Professional Responsibility, and the Executive Office of United States Attorneys* but they all said that all they found from the evidence were a series of violations of civil rights under § 241 and 242 of Title 18 U.S.C., and that since they did not have the expertise in prosecuting civil rights violators, they had to refer the case back to the Civil Rights Division. That was why, on early December 1990, the Petitioner brought said seventy-two (72) page-trial-ready-preparatory note along with more than two hundred (200) pieces of evidence directly to the United States Attorney General's Office with specific requests for (filing an Application for Appointment of an) Independent Counsel and that under no circumstance should this case be referred back to the Civil Rights Division again because of said personal conflicts of interest specified on the preceding sub-paragraph, and on page 13 of said trial-ready-preparatory note with appropriate mentioned evidence.

5. That the United States Attorney General, by a confidential assistant, stated that, unless there was pressure from Congress, under Presidential order or direct Court's order, the Attorney General traditionally would not file the Application for Appointment of an Independent Counsel for any case so he was not going to make an exception for this case but he would certainly assign some attorneys working within the Department of Justice as Federal Prosecutors for this case and that they had two thousand plus attorneys working in this (Department of Justice's) building, they could certainly *"find many ones who had never even heard of their (those criminal conspirators') names"*. The Petitioner, therefore, just had to settle for what they said for the time being.

6. That on late December, 1990 when the Petitioner found out that his case was again assigned to the Civil Rights Division instead of some Federal Prosecutor who had never even heard of those criminal conspirators' names like the Attorney General's Office said, he called the Attorney General's Office to complain about their violation of conflict of interest for appearance of impropriety by assigning Petitioner's case to the Civil Rights Division again. An Assistant to the Attorney General angrily told the Petitioner that: *"The evidence you left here was referred to the Executive Secretariat that did the assigning so neither the Attorney General nor anyone in this office could have any knowledge of the violation of conflict of interest. You are very intelligent so you must have known that"*.

7. That all Petitioner has known is that if the Attorney General had, on December 1990, filed an Application for Appointment of an Independent Counsel as Petitioner requested so those criminal conspirators could not possibly, on late January 1991, illegally issue warrants for Petitioner's arrest again for refusing to settle this matter with them which is the basis of the Writ of Habeas Corpus for this pending cause; and that if the case was mistakenly assigned to Bell and the Civil Rights Division by the Office of Executive Secretariat so when Bell read said trial-preparatory note at page 13 where it specified with appropriate evidence of their bragging that Bell and Goldstein would protect them from being prosecuted by the Department of Justice, Bell should have immediately closed said trial-preparatory note and sent it along with more than 200 pieces of evidence back the Executive Secretariat or the Attorney General's Office for appointment of a different attorney or an Independent Counsel. Instead, Bell violated conflict of interest again to protect them by doing nothing and sending Petitioner a letter signing his own name as Deputy Chief of the Civil Rights Division, Criminal Section to make some fun out of it. It should be noted that Bell is a Deputy Chief but evidently has more authority than the Chief of the Civil Rights Division, criminal Section who was a woman and probably got her position through Affirmative Action Programs.

8. That whether the Executive Secretariat or the Civil Rights Division violated the Conflict of Interest for appearance of impropriety, it is simply the Department of Justice has a conflict of interest to proceed with this case that the Attorney General has a duty to file an Application for Appointment of an Independent Counsel pursuant to Section 591(c) and 592(c) so this case could be proceeded especially now when Sims just *"infiltrated"* his Chief Deputy, Robert W. Gevers who was his criminal co-conspirator, into the United States Attorney's Office for the Northern District of Indiana as an Assistant U.S. Attorney.

9. That the Petitioner had, therefore, attempted to take this matter to the Attorney General's superior, the President of the United States, through a member of his family to persuade him to direct his Attorney General to file an Application for Appointment of an Independent Counsel. Those criminal conspirators had, somehow, known about that and that was when they, on January 24, 1991, illegally issued warrants, as they had previously threatened to do so, for Petitioner's arrest for refusing to settle this matter with them by not signing an agreement to give up his constitutional rights to trial and leave the state. They then, on January 25, 1991, had the Petitioner arrested by the U.S. Secret Services on said warrants to be held without bond in the Allen County Jail for sending to their subhuman mental institution again which is a basis of the pending Writ of Habeas Corpus for this cause.

10. That since this matter is now pending in this Court, this Court has the judicial responsibility to preserve the integrity of the criminal justice system for the interest of justice by appointing an Independent Counsel to conduct a grand jury investigation and prosecution of those criminal conspirators who have violated the federal criminal statutes including but not limiting to Civil Rights under Title 18 U.S.C. § 241 & 242 and Conflicts of Interest, along with perjuries, destructions of evidence, obstructions of justice, wire and mail frauds, etc. But first the United States Attorney General must file an Application for Appointment of an Independent Counsel under § 591(c) and 592(c) of Title 28 U.S.C. if the Court so ordered pursuant to *Nathan v. U.S. Attorney General* and *Dellums v. Smith, supra.*

11. That an Independent Counsel should be appointed also because of the political conflict of interest as defined by § 591(c) besides the personal conflict of interest for appearance of impropriety specified on the preceding paragraphs. As the Court is aware, after Republican candidate Stephen M. Sims had to withdraw from the United States Congressional race as the Petitioner had demanded him to do so or the evidence of his corruptions and criminal activities be turned over to the media, the Republican party lost that U.S. Congressional seat to a Democrat. So many Republicans, especially the local Republicans, have felt that Sims and his criminal co-conspirators should not be prosecuted no matter what crimes they've committed because Sims is the best hope for the Republican party to regain that United States Congressional seat which was a traditional Republican seat that was once held by Vice President Dan Quayle who used that seat to launch his political career. The U.S. Attorney General is a Republican and is a part of the Republican Administration of Vice President Dan Quayle. Therefore, an Independent Counsel must be appointed to also avoid the appearance of said political conflict of interest.

12. That a true and complete copy of this motion is served directly to the United States Attorney General at the Department of Justice in Washington DC. Although another same true and complete copy is also served to the Fort Wayne office of the United States Attorney for the Northern District of Indiana as required by the Rule for Services of Federal Rules of Civil Procedure where the U.S. Government is concerned, the Petitioner will move to strike any pleading papers filed by the office of the United States Attorney for the Northern District of Indiana on behalf of the Attorney General for violating conflict of interest for appearance of impropriety because the U.S. Attorney's Office for the Northern District of Indiana, by Assistant U.S. Attorney David H. Miller, has, on February 2, 1988, disqualified itself (Please see details on paragraph 4(a)) and because one of the criminal conspirators,

Robert Gevers, is now working in the United States Attorney's Office for the Northern District of Indiana as an Assistant U.S. Attorney.

13. That a true and complete copy of this motion is also served upon the Honorable Joseph R. Biden, Chairman of the Committee on Judiciary of the United States Senate and the Honorable Jack Brooks, Chairman of the Committee on Judiciary of the United States House of Representatives pursuant to the Ethics in Government Act for congressional oversight of Independent Counsel.

WHEREFORE: The Petitioner prays that the Court issue an order directing the United States Attorney General to file an Application for Appointment of an Independent counsel or to show cause why those criminal conspirators should not be prosecuted and if they are immune from prosecution, and for further just and proper relief.

I declare, under penalty of perjury, that the foregoing factual presentations are true and correct to my best recollection and belief.

RESPECTFULLY REQUESTED,

/s/ Lieu B. Hoang

LIEU B. HOANG, *Pro se* Petitioner
1682 Hobson Rd.
Fort Wayne, Indiana 46805
(219) 422-1631

MEMORANDUM OF LAW

(Please see paragraph 2 on page 78)

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion to Order the U.S. Attorney General to file an Application for Appointment of an Independent Counsel was served by U. S. Postal Service, postage prepaid, on the 1st day of April, 1991, to the following persons: The Honorable Dick Thornburgh, U.S. Attorney General, U.S. Department of Justice, 10th and Constitutional Avenue, Washington DC 20530; Assistant U.S. Attorney David H. Miller, United States Attorney's Office, 3128 Federal Building, 1300 S. Harrison Street, Fort Wayne, IN. 46802; The Honorable Joseph R. Biden, Chairman of Committee on Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington DC 20510, the Honorable Jack Brooks, Chairman of the Committee on Judiciary, United State House of Representatives; and the following Attorneys for Respondents: David A. Arthur, 219 Statehouse, Indianapolis, IN. 46204; and John O. Feighner, 444 East Main Street, Fort Wayne, IN. 46802.

/s/ Lieu B. Hoang

LIEU B. HOANG

THE SEPTEMBER 18, 1987 TELEPHONE CONVERSATION OF **BRIAN GOSHORN AND LIEU B. HOANG**

GOSHORN: Hello.
HOANG: Bob?
GOSHORN: Huh!
HOANG: Is Karen Richards there?
GOSHORN: Who is it?
HOANG: Is Karen Richards there?
GOSHORN: Ah... no. Who is calling?
HOANG: Is Karen Richards there?
GOSHORN: *(Chuckling)* Who would like to know?
HOANG: What?
GOSHORN: Who would like to know? Who wants to know?
HOANG: I want to know.
GOSHORN: Who?
HOANG: I want to know.
S.M. SIMS: *(Laughing)* Ha ha ha...
GOSHORN: *(Chuckling)* Excuse me, but who are you?
HOANG: My question to you is Karen Richards there, Yes or no?
GOSHORN: *(Chuckling)* I want to know... Who wants to know?
HOANG: I want to know.
GOSHORN: Why? --- Okay *(Talking to some else).*
HOANG: Are you Bob Wright?
GOSHORN: No. Guess again?
HOANG: What?
GOSHORN: I said guess again.
HOANG: How could I guess who you are? And I don't care. Just give him this message for me, okay, that if he doesn't stay away from Karen he'll get him AIDS and get himself killed because Karen has AIDS, get it? *(Chuckling).*
GOSHORN: *(Chuckling)* I want to know who is --- who is calling?
HOANG: Huh?
GOSHORN: I want to know who is calling?
HOANG: Oh, Karen's ex-boyfriend. Okay? Goodbye.

(END OF RECORDING)

THE SEPTEMBER 19, 1987
TELEPHONE CONVERSATION OF

KAREN E. RICHARD AND LIEU B. HOANG

RICHARDS: Hello.

HOANG: Good morning, Karen. Did I wake you up?

RICHARDS: Uh-huh.

HOANG: Uh-huh. Are you going to the YWCA today?

ROBERT WRIGHT: *(Far from the background)*
Karen, did you m---
(The telephone transmitter was covered up)

. . . . . .

RICHARDS: I am sorry.

HOANG: Now, who is that, the milkman?

RICHARDS: Yes *(Chuckling)*. Call me tomorrow?

HOANG: Okay, I'll be calling you.

RICHARDS: bye-bye.

HOANG: bye-bye.

(END OF RECORDING)

* * * * *

TRANSCRIPT OF

THE SEPTEMBER 19, 1987 INCIDENT AT THE YWCA

(Lieu B. Hoang inserted his micro-cassette recorder into his boot: Noise came from Hoang opening the door of his automobile, stepping out, closing its door and walking on the sidewalks of the YWCA)

(Talking to an unknown woman and her child, IRRELEVANT)

(Hoang continued walking on the YWCA sidewalks, and into the Reception Hall Building. Noise came from the people using the exercising equipment)

(Talking to Becky Wright [not related to Robert Wright] and to Karen E. Richards, IRRELEVANT)

(Walking from the Reception Hall Building to the Administrative Building)

(Talking to an unknown girl, IRRELEVANT)

(Walking from the Administrative Building back to his car where Robert Wright had been standing and waiting)

ROBERT WRIGHT: Lieu.

HOANG: What do you want?

(Both Wright and Hoang walked toward each other)

HOANG: Still messing around with Karen huh? Didn't you receive the message about Karen's AIDS?

ROBERT WRIGHT: Brian said you want to fight me, or kill me?

HOANG: No, I did not tell him that. That was not the message.

ROBERT WRIGHT: I know.

HOANG: So you better ask him for the right message?

ROBERT WRIGHT: So you better watch out because I am going to kick your ass.

(Noise came from a car going by and from Wright throwing a tree branch to Hoang's right boot where his recorder was hidden)

HOANG:	Oh really... Do it to see what happens to you. You think I am weak huh?
ROBERT WRIGHT:	Fuck you, Lieu. You stay away from Karen or I'll kill you. The prosecutor wanted you dead.
HOANG:	Who, Steven Sims?
ROBERT WRIGHT:	Yeah.

(Wright walked away so Hoang ran to the front of Wright)

HOANG:	Hey, did he tell you that?
ROBERT WRIGHT:	Yeah.
HOANG:	When was it?
ROBERT WRIGHT:	Fuck you. He said kill you.
HOANG:	Why, did he tell you why?
ROBERT WRIGHT:	Yes, you fucked him off.
HOANG:	Oh really (Chuckling). Thank you very much.

(Both Wright and Hoang walked away from each other and back to the Reception Hall Building).

(Talking to Richards who was using the phone, IRRELEVANT)

(Talking to a receptionist, IRRELEVANT)

(Walking out of the Reception Hall Building and back to his car)

(Noise came from Hoang opening the door of his automobile, stepping in and closing its door. The recorder was shut off)

(END OF RECORDING)

THE SEPTEMBER 20, 1987
TELEPHONE CONVERSATION OF

KAREN E. RICHARDS AND LIEU B. HOANG

RICHARDS: Hello.

HOANG: Karen.

RICHARDS: What do you want? *(Baby talk).*

HOANG: Ah... did --- Did you read my letter?

RICHARDS: Yes, *(Baby talk)* and I don't want to talk to you so leave me alone!

HOANG: Wait wait, Karen. There is some newspaper --- Ah... Are you still there?

RICHARDS: Yes *(Baby talk).*

HOANG: Some reporter ---

RICHARDS: Pardon?

HOANG: There is some newspaper reporter calling me --- is calling me. They're looking for me and I don't want want this matter in newspaper. So I am going to ---

RICHARDS: Lieu, I just want you to leave me alone *(Angry).* If you ever call me again or come to my house again, I am going to have you arrested. Now leave me alone.

(Noise came from Richards hanging up her telephone)

(END OF RECORDING)

* * * * *

INDIANA CODE 35-45-2-1. INTIMIDATION

(a) A person who communicates a threat to another person, with the intent that the other person engage in conduct against his will, commits intimidation, a class A misdemeanor. However, the offense is a:

(1) Class D felony if the threat is to commit a forcible felony or if the person to whom the threat is communicated is a Judge of any court; and

(2) Class C felony if, while committing it, the person draws or uses a deadly weapon.

(b) "Threat" means an expression of intention to:

(1) Unlawfully injure the person threatened or another person or damage property;

(2) Unlawfully subject a person to physical confinement or restraint;

(3) Commit a crime;

(4) Unlawfully withhold official action, or cause such withholding;

(5) Unlawfully withhold testimony or information with respect to another person's legal claim or defense, except for a reasonable claim for witness fees or expenses;

(6) Expose the person threatened to hatred, contempt, disgrace, or ridicule; or

(7) Falsely harm the credit or business reputation of the person threatened. [*IC 35-45-2-1, as added by Acts 1976, P.L. 148, § 5; 1977, P.L. 340, § 71; 1981, P.L. 300, § 3; P.L.183-1984, § 6.*]

INDIANA CODE 35-45-2-2. HARASSMENT

(a) A person who, with intent to harass, annoy, or alarm another person but with no intent of legitimate communication:

(1) Makes a telephone call, whether or not a conversation ensues;

(2) Communicates with a person anonymously or otherwise, by telegraph, mail, or other form of written communication; or

(3) Transmits a false or obscene message, or indecent or profane words, on a Citizens Radio Service channel;

commits harassment, a class B misdemeanor.

(b) A message is obscene if:

(1) The average person, applying contemporary community standards, finds that the dominant theme of the message, taken as a whole, appeals to the prurient interest in sex;

(2) The message refers to sexual conduct in a patently offensive way; and

(3) The message, taken as a whole, lacks serious artistic, literary, political, or scientific value. [*IC 35-45-2-2, as added by Acts 1976, P.L. 148, § 5; 1977, P.L. 340, § 72; 1977, P.L. 343, § 1; 1978, P.L. 82, § 4.*]

IC 33-14-1-6. APPOINTMENT OF SPECIAL PROSECUTOR

(a) Special prosecutors may be appointed only in accordance with this section.

(b) A Circuit or Superior Court Judge:

(1) Shall appoint a special prosecutor if: (A) Any person other than the prosecuting attorney or his deputy files a verified petition requesting the appointment of a special prosecutor; and (B) The prosecuting attorney agreed that a special prosecutor is needed;

(2) May appoint a special prosecutor if: (A) A person files a verified petition requesting the appointment of a special prosecutor; and (B) The Court finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecutor has committed a crime;

(3) May appoint a special prosecutor if: (A) The prosecuting attorney files a petition requesting the Court to appoint a special prosecutor; and (B) The Court finds the appointment is necessary to avoid the appearance of impropriety; and

(4) ... [*Irrelevant*]

(c) Each person appointed to serve as a special prosecutor:

(1) Must consent to the appointment; and

(2) Must be: (A) The prosecuting attorney; or (B) A deputy prosecuting attorney in a county other than the county in which he is to serve as special prosecutor.

(d) A person appointed to serve as a special prosecutor has the same powers as the prosecuting attorney of the county. However, the scope of the special prosecutor's duties shall be limited by the appointing judge to include only the investigation or prosecution of a particular case or particular grand jury investigation.

(e) If the special prosecutor is not regularly employed as a full-time prosecuting attorney or full-time deputy prosecuting attorney, the compensation for his services: (1) Shall be paid to him from the unappropriated funds of the appointing county; and (2) Shall not exceed a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing Circuit, and travel expenses, and reasonable accommodation expenses actually incurred.

(f) If the special prosecutor is regularly employed as a full-time prosecuting attorney or deputy prosecuting attorney, the compensation for his services: (1) Shall be paid out of the appointing county's unappropriated funds to the treasurer of the county in which he regularly serves; and (2) Must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing Circuit, travel expenses, and reasonable accommodation expenses actually incurred.

[*IC 33-14-1-6, as added by Acts 1982, P.L. 195, § 1; P.L.170-1984, § 1.*]

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

COUNT I AND COUNT II

STATE OF INDIANA)
)
vs.)
)
LIEU B. HOANG)

AFFIDAVIT FOR

PROBABLE CAUSE

Undersigned swears or affirms that he believes and has good cause to believe that:

On or about the 18th day of September, 1987, in the County of Allen and in the State of Indiana, said Defendant, Lieu B. Hoang, did communicate to Robert Wright, a threat, to wit: to kill him, with the intent that said Robert Wright engage in conduct against his will, to wit: refrain from maintaining a relationship with Karen E. Richards.

On or about the 19th day of September, 1987, in the County of Allen and in the State of Indiana, said Defendant, Lieu B. Hoang, did communicate to Robert Wright, a threat, to wit: to kill him, with the intent that said Robert Wright engage in conduct against his will, to wit: refrain from maintaining a relationship with Karen E. Richards.

Lieu B. Hoang is described as being a male/Oriental whose date of birth is 4/14/50 and whose social security numbers are listed as 586-36-9420 and 486-36-9420 and who is 5'4", 120 lbs. and having black hair/brown eyes.

The affiant, Ron Lapp, a Detective with the Fort Wayne Police Department believes and has good cause to believe that the said Lieu B. Hoang committed the aforesaid offenses that are listed in the informations. Det. Lapp bases his belief on the fact that he has been investigating the harassment of Allen County Deputy Prosecuting Attorney, Karen E. Richards, since September 8, 1987. Said Harassment involves repeated contacts from a male Oriental by the name of Lieu B. Hoang.

That on Monday September 21, 1987, at approximately 10:00 AM, the undersigned was contacted by Karen E. Richards regarding an escalation of the above mentioned harassment. Ms. Richards described to the undersigned additional contacts by the defendant and the fact that the defendant had been in contact with a male friend by the name of Robert Wright.

That according to Ms. Richards and Robert Wright, Lieu B. Hoang had communicated death threats to Mr. Wright on two occasions. The first occasion occurred on September 18, 1987, in the phone conversation to Mr. Wright's roommate, Brian Goshorn. At said time, Lieu B. Hoang requested Mr. Goshorn to communicate to Robert Wright that he should stop seeing Ms. Richards or that he, Lieu B. Hoang, would kill him.

That on September 19, 1987, Lieu B. Hoang went to the YWCA on North Wells Street in Fort Wayne, Allen County Indiana where he confronted Robert Wright again, and again instructed Mr. Wright to stop seeing Ms. Richards or he, Lieu B. Hoang, would kill him.

That Karen E. Richards and Robert Wright can identify Lieu B. Hoang as the person who committed the aforesaid offenses.

Wherefore, upon hearing held, the undersigned requested that a warrant be issued for the arrest of the defendant herein.

/s/ Ron Lapp

Ron Lapp

Subscribed and sworn to before me this 21 day of September, 1987.

/s/ Daniel J. Sigler

Special Prosecuting Attorney
Daniel J. Sigler

DANIEL J. SIGLER
SPECIAL PROSECUTING ATTORNEY
38TH JUDICIAL CIRCUIT
STATE OF INDIANA

ORDER

Hearing on issue of probable cause held. State of Indiana, by Special Prosecuting Attorney Daniel J. Sigler, files Affidavit for Probable Cause, which is examined by the Court. Court finds probable cause does exist for the arrest of Defendant Lieu B. Hoang, and orders Clerk to issue warrants for arrest of Defendant Lieu B. Hoang for the crime of Ct. I & Ct. II, Intimation [sic], Class D Felonies. Bail fixed in the sum of $10,000.00 each count.

September 21, 1987

/s/ Philip Thieme

Judge, Allen Superior Court

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

COUNT I

CLASS D FELONY

INFORMATION FOR

INTIMIDATION

I.C. 35- 45-2-1

STATE OF INDIANA)
)
vs.)
)
LIEU B. HOANG)

Undersigned, being duly sworn upon oath, says that: On or about the 18th day of September, 1987, in the County of Allen and in the State of Indiana, said Defendant, Lieu B. Hoang, did comunicate to Robert Wright, a threat, to wit: to kill him, with intent that said Robert Wright engage in conduct against his will, to wit: refrain from maintaining a relationship with Karen E. Richards, being contrary to the form of the statute in such case made and provided.

/s/ Ronald Lapp

Ronald Lapp

Subscribed and sworn to before me this 21st day of September, 1987.

/s/ Daniel J. Sigler

Special Prosecuting Attorney
Daniel J. Sigler

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

COUNT II

STATE OF INDIANA)
)
vs.)
)
LIEU B. HOANG)

CLASS D FELONY

INFORMATION FOR

INTIMIDATION

I.C. 35- 45-2-1

Undersigned, being duly sworn upon oath, says that: On or about the 19th day of September, 1987, in the County of Allen and in the State of Indiana, said Defendant, Lieu B. Hoang, did comunicate to Robert Wright, a threat, to wit: to kill him, with intent that said Robert Wright engage in conduct against his will, to wit: refrain from maintaining a relationship with Karen E. Richards, being contrary to the form of the statute in such case made and provided.

/s/ Ronald Lapp

Ronald Lapp

Subscribed and sworn to before me this 21st day of September, 1987.

/s/ Daniel J. Sigler

Special Prosecuting Attorney
Daniel J. Sigler

TRANSCRIPT OF THE SEPTEMBER 21, 1987
BREAK-IN OF RONALD LAPP AND ACCOMPLICES

(The custom-made VOX [start/stop] activated the hidden cassette recorder as the intruder opened the door and entered the room)

The intruder's footsteps, opened drawers and riffled through papers.

Police radio squelch noise, riffled through files and papers, closed drawer, opened another drawer. Metalic noise, big clunk, closing noise. Wooden desk creak, prying noise. Rustled through drawers and papers.

Voice came from the police radio but intruder did not respond, still riffling through papers and then opening drawer with non-paper items.

The intruder mumbled: *"It's seven-thirty"* but still riffling through both paper and non-paper items. Voice on the police radio with no response. Non-paper sifting with heavy boxes and papers, assorting. Police radio squelch, still opening drawer and riffling through papers.

The intruder opened the closet, a stack of cassette tapes fell down. In slow motion, eight (8) distinctive impacts. The intruder sighed but got excited and mumbled: *"Okay"*. Scooting chair's noise. The intruder picked up the cassette tapes, sifted and sorted out approximately eight or nine cassette tapes.

The man on the radio checked on the intruder's progress. The intruder responded: *"You got him"* and then went down stairs while the man on the radio complemented the intruder who has been identified through voice prints by Oscar I. Tosi, Ph.D., Sc.D. as Ronald Lapp.

Lapp instructed his accomplices to *"get on it and check it out"*. One of his accomplices said that those tapes should have been placed in a *"safety deposit box"*. There was discussion betweeen Lapp, his accomplices and the man on the radio who was identified as Stephen Sims.

The last hearable voice came from the police radio. VOX stop.

VOX activated the hidden recorder again when Lapp went back to the room setting down the cassette tapes, scooting chair, putting the cassette tapes back in the closet. There was ten (10) distinctive impacts. Noise came from opening drawer and riffling through files and papers.

Police radio squelch. Noise came from sorting out and picking up the papers, closing the drawers and footsteps.

Squeaky hinge and closing door's noise. VOX stop.

(END OF RECORDING)

THE SEPTEMBER 24, 1987 TELEPHONE CONVERSATION OF FBI AGENT KENNETH IVAN AND LIEU B. HOANG

McGAULEY: FBI.

HOANG: Yes, could I speak to Agent Ivan, please?

McGAULEY: Just a moment. Ken. *(Calling Agent Ivan)*

IVAN: ..... *(Picked up the telephone but did not answer)*

HOANG: Hello. Are you there Ken Ivan?

IVAN: Yes, I am here.

HOANG: Okay. Now, why did you lecture me and then put me on hold last Tuesday?

IVAN: That's right. You deserved it.

HOANG: I deserved it for what? For going around and threatening to kill people?

IVAN: That's right!

HOANG: That's what you told me, right?

IVAN: That's right.

HOANG: So how come you believe I am guilty?

IVAN: I didn't say -- I didn't -- Well, that's a different story. I --

HOANG: No well, you lectured me, you know?

IVAN: That's right. You deserved it.

HOANG: *(Laughing)* What make you think I deserve it?

IVAN: Because you're not allowed to go around threatening and intimidating people. It's against the law.

HOANG: How do you know I go around threatening to kill people?

IVAN: Well, that's what you go to the court. That's what we're going to find out.

HOANG: Okay. So why don't you wait until after, you know, I have been convicted then tell me that, you know?

IVAN: Then I --- Then I will.

HOANG: Oh yes. You should have waited until I have been convicted first, do you know that?

IVAN: Okay. You want me to, I will.

HOANG: *(Laughing)* Okay. Now, let me ask you some straight questions, okay, because this is the reason I am calling you. Did Ron Lapp call you even before I called you last Tuesday?

IVAN: Did Ron Lapp call me ---

HOANG: Just yes or no.

IVAN: Yes.

HOANG: Okay. Now, did he tell you that he erased my micro-cassette tape at the lock-up?

IVAN: Yes.

HOANG: Okay, good. Now, did he also tell you that he broke into my house to erase many other tapes?

IVAN: . . . . . *(not answering)*

HOANG: Hello? Are you still there, Ken Ivan?

IVAN: Sir, my contact with the police department is none of your business.

HOANG: Okay. So you intend that to hide, you know, what he told you on that day, right?

IVAN: I told you what I talked with the police department is none of your business. The police --- official police's matter and I don't need to discuss that with you.

HOANG: So, I --- I tell you in case you forget when I call you to the court to testify you better testify the truth exactly what you told me, okay?

IVAN: Oh, you're going to tes --- subpoena me to testify? You can do that.

HOANG: Yes, I can, you know. If you lie, you know that ---

IVAN: Well, I don't ---

HOANG: I will play your tape --- I will play your tape in court. Do you know that?

IVAN: I will --- I will certainly --- I will certainly not going to lie

sir, but I'll testify whatever I recall. You can tes --- you can subpoena me if you choose.

HOANG: I tell you what. I have been recording ---

IVAN: I assume you have been recording this conversation too?

HOANG: Yes.

IVAN: Okay.

HOANG: Do you want to hear it?

IVAN: .....

(Hoang turned the recorder off to play back the tape for Ken Ivan to hear and then continued recording the conversation.)

IVAN: You're allowed to do that.

HOANG: So when I call you to the court, you better testify exactly what you told me, okay? And why you didn't go on to do this or to do that or what I told you to do.

IVAN: I tell you why not. It was not the government matter. That's why I didn't go to your house.

HOANG: Okay. Just say --- say so in court, okay?

IVAN: Sure. It's not an issue for the government to concern itself with the burglary in your house. It's not a federal violation.

HOANG: But it's the police who broke into my house to destroy some evidence.

IVAN: Sir, I got thing to do, and this doesn't involve the government... and... I am sorry, but ---

HOANG: Sure, it involves the government, because it ---

IVAN: No no. I have to go, this is a matter between you and the court. It has nothing to do with the federal government.

HOANG: Okay.

IVAN: Okay. I got to go.

HOANG: Bye.

IVAN: Bye.

(END OF RECORDING)

THE OCTOBER 13, 1987

TELEPHONE-CALL TO KAREN E. RICHARDS RESIDENCE

RECORDED FROM THE TELEPHONE-LINE OF (219) 422-1631

TELEPHONE DIALING . . . . . .

UNKNOWN VOICE: *(Inaudible voice came from a police radio)*

RONALD LAPP: Yes sir.

TELEPHONE RINGING . . . . . .

RICHARDS: *(Richard's voice came from her answering machine).*

Hello, I am sorry but I can't answer the phone right now. If you would wait until you hear the beep and then leave your name, your telephone number and a brief message, I will return your phone-call as soon as I have a chance ---

RONALD LAPP: Karen Richards is not home.

(Talking to someone else while listening to Richards' answering machine)

RICHARDS: Thanks, bye.

RONALD LAPP: *(Hanging up the telephone)*

(END OF RECORDING)

* * * * *

INDIANA CODE 35-33-8-5

Alteration or Revocation of Bail

(d) **The Court** may revoke bail or an order for release on personal recognizance **upon clear and convincing proof by the state** that while admitted to bail the defendant:

(1) Or his agent threatened or intimidated a victim, prospective witnesses, or jurors concerning the pending criminal proceeding or any other matter;

(2) Or his agent attempted to conceal or destroy evidence relating to the pending criminal proceeding;

(3) Violated any condition of his current release order;

(4) Failed to appear before the court as ordered at any critical stage of the proceedings; or

(5) Committed a felony or a Class A misdemeanor that demonstrates instability and a disdain for the Court's authority to bring him to trial.

[IC 35-33-8-5, as added by Acts 1981, P.L. 298, § 2; P.L.36-1990, § 6.]

* * * * *

TRANSCRIPT OF THE OCTOBER 16, 1987

INCIDENT AT THE LANDING

(Noise came from Lieu B Hoang inserting his micro-cassette recorder into his boot, opening the door of his automobile, stepping out, closing its door and walking on the sidewalk into a bar on the Landing)

(Noise came from Hoang walking out from a bar onto a sidewalk, then into another bar and ordering a drink)

(Noise came from Hoang - APPROXIMATELY FIFTY (50) MINUTES LATER - walking out from the bar onto a sidewalk)

(Noise came from Hoang opening the door of his automobile, stepping in and closing its door)

(Noise came from Hoang inserting key and igniting, coughing and from Robert Wright knocking on the T-top of Hoang's automobile. Noise came from Hoang opening the power window)

HOANG: What do you want?

ROBERT WRIGHT: Follow me.

HOANG: What?

ROBERT WRIGHT: To the police station.

(Noise came from Hoang closing the power window, starting the engine and driving his automobile to the police station in the basement of the City-County Building)

(Noise came from Hoang parking his automobile, removing keys, opening door, stepping out and walking away then immediately walking back into his automobile, closing the door and reaching for his micro-cassette recorder hidden inside his boot)

(The micro-cassette recorder was shut off)

(END OF RECORDING)

RULE 13: INDIANA RULES OF CRIMINAL PROCEDURE

Hereafter whenever in any criminal proceeding, in any court except the courts of justice of the peace and magistrates, it shall become necessary to select a special Judge, the exclusive manner of his selection shall be as follows:

(1) The presiding judge, or if there be no such Judge, the regular judge of the court shall submit a list of three [3] persons from which, by striking, an appointee may be selected. In a moving party proceeding each party shall strike one [1] name from such list. The moving party shall strike first. From the name or names remaining the judge submitting such list shall select and appoint the special Judge. In cases where a Judge on his own motion, disqualifies himself, the prosecutor shall strike first.

(2) Any regular judge of a circuit, superior, criminal, probate or juvenile and any member of the bar of this state shall be eligible for appointment in any of such courts as a special judge in any case pending in which he has not sat as judge or been named on a previous panel, unless he is disqualified by interest or relationship or is then serving as bailiff, reporter, probate commissioner, referee, or other such appointed official of the court in which the case is pending. In courts other than those named, a special judge shall be selected from judges of courts having the same or similar jurisdiction or from members of the bar.

(3) A special judge so selected need not reside in the county where the case is pending or an adjoining county, but his accessibility should be considered in making the selection. (4) . . . . . *(Irrelevant).*

(5) When it becomes necessary to submit a written list under subdivision (1) of this rule, the presiding judge, within two [2] days after his attention has been called to that fact, shall submit to the parties a written list in accordance with subdivision (1) of this rule. The parties shall strike from the written list as provided in subdivision (1) of this rule within not less than seven [7] nor more than fourteen [14] days thereafter as the court may allow. If the moving party fails to strike within the time allowed, he shall not be entitled to a change of venue from the judge and the presiding judge shall assume jurisdiction over the case. If the non-moving party fails to strike within the time allowed, the clerk shall strike for him.

(6) If a special judge selected by any of the means aforesaid shall not within twenty [20] days after his appointment appear and qualify, his failure so to do shall revoke his appointment and it shall be the duty of the presiding judge, or if there be none, the regular judge of the court, to select another as such special judge in the same manner as is herein provided for the original selection of the special judge. . . . .

STATE OF INDIANA)
)
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE NO. 02D04 - 8709 - CF - 474

STATE OF INDIANA

VS.

LIEU HOANG

VERIFIED MOTION FOR CONTINUANCE

The defendant, Lieu B. Hoang, by counsel respectfully moves this court for a continuance of his currently scheduled jury trial:

1. Trial was currently set for July 20 and 21, 1988.

2. Counsel for defendant has another jury trial, with a speedy trial request, State v. David, 02D04-8806-CM-11561.*

3. The defendant personally understands the reason for and agrees to this continuance.*

4. Daniel Sigler, Special Prosecuting Attorney, has no objection to this continuance.

WHEREFORE, the defendant would respectfully request a continuance, for a resetting at the Court's convenience, and for any and all other proper relief.

I affirm that the above representations are true and correct to the best of my information and belief.

* [*Emphasis added*]

/s/ Linda M. Wagoner

Linda M. Wagoner

CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing Motion for Continuance was served upon Daniel J. Sigler, Special Prosecuting Attorney, 227 S. 2nd Street, P.O. Box 554, Decatur, IN 46733, and upon The Honorable David L. Hanselman, Special Judge, Courthouse, Bluffton, IN 46714, this 29th day of June, 1988.

MYERS & WAGONER
621 Paine Webber Bldg.
803 S. Calhoun
Fort Wayne, IN 46802
(219)424-0600

/s/ Linda M. Wagoner

Linda M. Wagoner

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN CIRCUIT COURT

1987 TERM, CAUSE NO. CC 83-46

IN THE MATTER OF THE
APPOINTMENT OF A SPECIAL
PROSECUTOR

PETITION FOR APPOINTMENT OF SPECIAL PROSECUTOR

COME[S] NOW Stephen M. Sims, Prosecuting Attorney for the 38th Judicial Circuit of Indiana and respectfully moves the Court for the appointment of a Special Prosecutor and in support of said Petition states as follows:

1. That Karen E. Richards is a Deputy Prosecuting Attorney with the Allen County Prosecutor's Office.

2. That said Deputy Prosecuting Attorney has alleged that she has been repeatedly harassed by Lieu B. Hoang and has requested that these allegations be investigated.

3. **That said Lieu B. Hoang has previously filed a Disciplinary Action with the Supreme Court of the State of Indiana against the Prosecuting Attorney of Allen County and his staff.***

4. That in order to avoid any appearance of impropriety on the part of the Prosecuting Attorney or his deputies, the assisgnment [sic] of a Special Prosecutor is requested.

WHEREFORE, Stephen M. Sims respectfully Petitions the Court for the Appointment of a Special Prosecutor for the purpose of investigating the above allegations and for all other just and proper relief in the premises.

/s/ Stephen M. Sims

Stephen M. Sims
Prosecuting Attorney
38th Judicial District

* [*Emphasis added*]

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN CIRCUIT COURT

1987 TERM, CAUSE NO. CC 83-46

IN THE MATTER OF THE
APPOINTMENT OF A SPECIAL
PROSECUTOR

ORDER

COME[S] NOW Stephen M. Sims, Prosecuting Attorney for the 38th Judicial Circuit, Indiana, and files this Petition requesting appointment of Special Prosecutor in the following words and figures, to wit:

H.I.

The Court being duly advised in the premises and pursuant to I.C. 33-14-1-6 (b) (3) now finds the appointment of a Special Prosecutor is necessary in order to avoid any appearance of impropriety on the part of said Prosecuting Attorney or his Deputies.

The Court further finds that Adams County Prosecuting Attorney's Daniel J. Sigler should be appointed as Special Prosecutor for the reason herein set forth.

IT IS THEREFORE ORDERED:

1. Daniel J. Sigler, Prosecuting Attorney of Adams County, Indiana, or any of his duly appointed Deputies are hereby appointed **Special Prosecutor of Adams County***, Indiana, in and for the following matter:

A. The investigation and possible filing of criminal charges involving the alleged harassment of Deputy Prosecuting Attorney, Karen E. Richards, by Lieu B. Hoang.

2. Said Special Prosecutor shall assume his duties and juristions herein upon the filing of his oath in the Allen Circuit Court.

Dated this 3rd day of September, 1987.

/s/ Thomas L. Ryan, Judge
Allen Circuit Court

* [*Emphasis added*]

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN CIRCUIT COURT

1987 TERM, CAUSE NO. CC 83-46

IN THE MATTER OF THE
APPOINTMENT OF A SPECIAL
PROSECUTOR

O A T H

I, Daniel J. Sigler, Adams County Prosecuting Attorney and Special Prosecutor of Allen County, Indiana, do hereby swear or affirm that I will faithfully discharge my duties and responsibilities as Special Prosecutor in each of the matters of which I have been appointed by the order of the Allen Circuit Court dated September 3, 1987.

Date: 9 - 10 - 87

/s/ Daniel J. Sigler

Daniel J. Sigler
Adams County Prosecuting Attorney
Allen County Special Prosecutor

I affirm under the penalties for perjury that the above and foregoing representations are true and correct to the best of my knowledge.

/s/ Daniel J. Sigler

Daniel J. Sigler, being first duly sworn upon his oath, states that he has read the above and foregoing oath, and that the facts contained therein are true.

/s/ Daniel J. Sigler

Subscribed and sworn to before me a Notary Public in and for said County and State this 10th day of September, 1987.

/s/ Constance J. Moser

My Commission Expires:
September 1, 1990

Constance J. Moser, Notary Public
A Resident of Adams County

STATE OF INDIANA)) COUNTY OF ALLEN)	IN THE ALLEN SUPERIOR COURT CAUSE NO. 02D04-8709-CF-474
STATE OF INDIANA VS. LIEU HOANG	**INFORMATION FOR:** Count III HARASSMENT Class B Misdemeanor Count IV HARASSMENT Class B Misdemeanor Count V HARASSMENT Class B Misdemeanor Count VI HARASSMENT Class B Misdemeanor

Count III

The undersigned, being duly sworn upon his oath, says that:

On or about the 18th day of September, 1987, in Allen County, State of Indiana, Lieu B. Hoang, did, with intent to harass Brian Goshorn, Robert Wright and Karen Richards, make a telephone calls [sic] to Robert [sic] Goshorn, Robert Wright and Karen Richards, Lieu B. Hoang not intending any legitimate communication, contrary to the form of the statutes in such cases made and provided by I.C. 35-45-2-2 and against that peace and dignity of the State of Indiana.

Count IV

The undersigned, being duly sworn upon his oath, says that:

On or about the 19th day of September, 1987, in Allen County, State of Indiana, Lieu B. Hoang, did, with intent to harass Karen Richards, make a telephone call to Karen Richards, Lieu B. Hoang not intending any legitimate communication, contrary to the form of the statutes in such cases made and provided by I.C 35-45-2-2 and against that peace and dignity of the State of Indiana.

Count V

The undersigned, being duly sworn upon his oath, says that:

On or about the 20th day of September, 1987, in Allen County, State of Indiana, Lieu B. Hoang, did, with intent to harass Karen Richards, make a telephone call to Karen Richards, Lieu B. Hoang not intending any legitimate communication, contrary to the form of the statutes in such cases made and provided by I.C. 35-45-2-2 and against that peace and dignity of the State of Indiana.

Count VI

The undersigned, being duly sworn upon his oath, says that:

On or about the 13th day of October, 1987, in Allen County, State of Indiana, Lieu B. Hoang, did, with intent to harass Karen Richards, make a telephone call to Karen Richards, Lieu B. Hoang not intending any legitimate communication, contrary to the form of the statutes in such cases made and provided by I.C. 35-45-2-2 and against that peace and dignity of the State of Indiana.

/s/ *Daniel J. Sigler*

Daniel J. Sigler

Subscribed and sworn to before me this 9th day of June, 1989.

/s/ *Rhonda M. Conrad*

Rhonda M. Conrad, Notary Public
Resident of Allen County, IN

My Commission Expires:
September 9, 1992

APPROVED BY ME:

/s/ *Daniel J. Sigler*

Daniel J. Sigler
Special Prosecuting Attorney
38th Judicial Circuit

STATE OF INDIANA	)	IN THE ALLEN SUPERIOR COURT
	) SS:	
COUNTY OF ALLEN	)	CAUSE No. 02D04 - 8709 - CF - 474
STATE OF INDIANA	)	
	)	
vs.	)	RECORD OF PROCEEDINGS
	)	
LIEU B. HOANG	)	

Relevant Excerpts from the Transcript of
THE JANUARY 26, 1990 TESTIMONY OF JERRY NOBLE
Administrator of Allen Superior Court

Also present: Daniel J. Sigler, John W. Forcum. Recorded by Court Reporter Dorothy P. McClymonds.

HOANG: ... On the first day of my last trial of November 27, [1989], did you happen to find out about the Court file for jury missing from the Court?

NOBLE: ... I recall that the questionnaires were not in the file cabinet. They were, I believe, checked out to the prosecutor. I'm not a hundred percent certain on that at that time.

HOANG: ... How did you find out about that?

NOBLE: It was conversation, I think, with the Central Scheduling staff in the Office, I think it was Mary Galloway that indicated that.

HOANG: Who did you mean? This so-called Special Prosecutor or Allen County Prosecutor Stephen Sims?

NOBLE: She did not specify. I assume that she meant to the Allen County Prosecutor because I don't think Mr. Sigler was around at the time, but I don't know that for certain.

HOANG: Who do you mean by Allen County Prosecutor? Would you mention his name?

NOBLE: Stephen Sims.
(Original Transcript: P. 123, L. 14 to P. 125, L. 11)

. . . . . .

HOANG: By the way, the Allen County Prosecutor, are you aware that he is a disqualified prosecutor for this case?

NOBLE: I would say that I am aware of that just by observation. I don't know anything officially. It's not something I have studied in the record, but that's been my observation, yes.

(Original Transcript: P. 126, L. 4 to 10)

. . . . . .

HOANG: And after you ordered your personnel to call Sims' office to get back the file, did they return the file?

NOBLE: To my knowledge, they did. I assume that they did only because I didn't hear of any further problem arising out of that. So I assume that they got it back pretty quickly.

(Original Transcript: P. 128, L. 18 to P. 129, L. 4)

. . . . . .

HOANG: So you did not know that in advance until I asked you about that?

NOBLE: No. I didn't know about this specific panel being taken by the prosecutor's office in advance. Of course, as I say, it happens on a routine basis.

HOANG: They do that on every case?

NOBLE: I'm not sure that they do it on every case. I would imagine they do it on most cases, if not on all cases.

HOANG: Even on a case they have nothing to do with?

NOBLE: That's not for me to answer. I don't have any bearing on that.

(Original Transcript: P. 134, L. 10 to P. 135, L. 1)

. . . . . .

HOANG: ... Did you make a specific investigation why Sims took the file and what he has done with it?

NOBLE: No, I did not.

(Original Transcript: P. 137, L. 7 to 10)

* * * * *

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE No. 02D04 - 8709 - CF - 474

STATE OF INDIANA)
)
vs.) RECORD OF PROCEEDINGS
)
LIEU B. HOANG)

Relevant Excerpts from the Transcripts of
THE NOVEMBER 27, 1989 JURY TRIAL

Day 2, November 28, 1989. Court Reporter: Avis I. Lyons

FORCUM: We will go on the record under Cause No. 02D04-8709-CF-474, State of Indiana vs. Lieu B. Hoang. We will show the State appears by Daniel J. Sigler, Special Prosecuting Attorney. We will show the defendant fails to appear. This was set for trial at nine o'clock a.m. The defendant had called and indicated he was confused as to whether it started at nine or nine-thirty, that he would be here as close to nine o'clock as possible. The court notes that it is now nine - thirty a. m. Accordingly, due to the defendant's failure to appear, the jury panel is discharged. . . . .

(Original Transcript: P. 2, L. 1 to 12)

. . . . . .

FORCUM: We will go back on the record now that the jury panel has left the court room. The defendant still has not appeared. The court notes the defendant has posted a $2,000.00 cash deposit bond. The court will show a judgment in the sum of $20,000.00 entered against the defendant. The defendant shall forfeit his $2,000.00 cash deposit. Also, a warrant is ordered to be issued to be served on the defendant to be held in custody. Once the defendant is in custody, the court will set a hearing on the defendant's contempt for failure to appear. Mr. Sigler, do you know of any other matters that need to be taken care of at this time?

SIGLER: No, Your Honor.

RECESS UNTIL HOANG APPEARED

FORCUM: We will go back on the record under Cause No. 02D04-8709-CF-474, State of Indiana vs. Lieu B. Hoang. We will show the State appears by Special Prosecuting Attorney Daniel J. Sigler. We will show the defendant, Lieu B. Hoang, appears in person. The Court notes the time is five minutes of ten. Defendant did appear in court at approximately fifteen minutes until ten O'clock. The Court will note that on docket entry that was made on November 17th, and which a copy of the docket had been given to defendant, Lieu B. Hoang, the last part of the entry says, "This case remains set for trial on November 27th, 1989, to begin with the parties present at eight-thirty a.m. [sic] ..."

(Original Transcript: P. 3, L. 2 to P.4, L. 10)

. . . . . .

FORCUM: *(Ordered Deputy Sheriff James Herman)* Will you serve the warrant on the defendant at this time?

DEPUTY SHERIFF: "State of Indiana, Allen County, State of Indiana vs. Lieu B. Hoang, 1682 Hobson Road, Fort Wayne, Indiana. State of Indiana, to Sheriff of Allen County. Greeting. You are commanded to arrest Lieu B. Hoang, if he may be found in your county so that you have him before the Judge of the Allen Superior Court instanter and then and there to answer the State of Indiana on a charge of contempt of court, failure to appear and abide by the Court of thereupon and return to this writ bond, no bond. Witness to the clerk and seal of said court this 28th day November A.D. 1989..."

(Original Transcript: P. 7, L. 8 to 21)

. . . . . .

COURT ADJOURNED

(*Court Reporter Avis I. Lyons noted on the original transcript that:*

"Whereupon court adjourned at 10:03 am on November 28, 1989"

which is still two (2) minutes sooner than the "five minutes of ten" *that Forcum exaggerated fifteen minutes before Lyons noted the time*)

STATE OF INDIANA)		IN THE ALLEN SUPERIOR COURT
)	SS:	COURT - NO. 4
ALLEN COUNTY)		1989 TERM
STATE OF INDIANA)		
)		
vs.)		
)		
LIEU B. HOANG)		CAUSE NO. 02DO4-8709-CF-474

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Court having taken under advisement, the forfeiture and entry of judgment on the defendant's bond and also taking under advisement, the defendant's Petition for Writ of Habeas Corpus, the Court makes the following findings of fact, conclusions of law and order of the Court.

1. Defendant and the State of Indiana were ordered to appear on November 28, 1989 at 9:00 a.m. to begin voir dire of the jury and the defendant's jury trial. This fact was made known to the defendant by the specific entry on the court's docket as well as informing the defendant on numerous occasions during the preliminary trial, conferences and hearings on November 27, 1989.

2. At approximately 8:30 a.m. on November 28, 1989, the defendant called the court and spoke to Susan O'Malley, the Court Clerk. Mr. Hoang asked the clerk what time trial was to begin. Mrs. O'Malley informed the defendant that trial was to begin at 9:00 a.m. The defendant responded that he did not know whether or not it was to start at 9:00 or 9:30 and that **he would be a little late.*** The Court Clerk, Mrs. O'Malley further informed the defendant that he should appear as close to 9:00 as possible.

3. The defendant claims he informed the Court Clerk that he was attempting to obtain the original tape recordings as evidence in the case from the Federal Express office pursuant to the Court's instructions on November 27, 1989. The Court finds that the defendant did not inform the Court Clerk that he was attempting to obtain evidence form the Federal Express Office.

4. The defendant, at the hearing on December 26, 1989, asserts that he also had a flat tire. The Court finds that the defendant made no mention of a flat tire to Mrs. O'Malley in his phone conversation with

her on November 28, 1989 and further the defendant did not make any mention to the Court of a flat tire on November 28, 1989 when he appeared in Court late from trial.

5. On November 28, 1989, the Court waited until 9:30 a.m. at which time the Court discharged the jury panel. The Court noted that the defendant had failed to appear as ordered by the Court. The Court issued a warrant for the defendant's arrest and declared the defendant's cash deposit bond to be forfeited and pursuant to IC 35-33-8-7, the Court immediately entered judgment on the bond in the sum of $20,000.00 and ordered the amount deposited, less fees retained by the Clerk, to be transferred to the State Common School Fund. On December 13, 1989 the Court on its own motion, vacated and set aside the $20,000.00 judgment on the bond and set a hearing on the bond forfeiture and entry of judgment specifically giving notice to the defendant. The Court's action was taken due to the fact that language on the face of the bond that had been executed by the defendant as well as a family member, contained language of a thirty (30) day notice to the defendant. The Court setting the hearing date for December 26, 1989 was to give the defendant thirty (30) days from the date of his notice on November 28, 1989, in keeping the time period short as possible to expedite the disposition of these matters as it relates to defendant's case.

6. The defendant asserts that the Court set the defendant up to be held in contempt by ordering him to obtain tape recordings in his possession or the possession of his expert witness and have them there prior to trial. The Court finds that the defendant was given the opportunity at a pretrial conference to stipulate to the admissibility of copies of the tape recordings which were in the possession of the State of Indiana or left with the court reporter. The defendant refused to stipulate to the authenticity or admissibility of the tapes and the Court **did direct the defendant to obtain the originals*** and have them available in order for the State to introduce the originals into evidence, thereby avoiding objection to the authenticity or the best evidence as the original tapes being introduced. If the defendant would have informed the Judge that he was having difficulty in picking up the tapes from the Federal Express Office, he would have been given time to pick those up over the noon recess. The Court and the parties could have begun the voir dire process of the jury promptly a 9:00 a.m. On November 27, 1989, the defendant and the State of Indiana were specifically informed by the Court that the Court would not tolerate unreasonable delays for the jurors, that this case was to be expedited and delays which the jurors were present, were to be kept to a minimum. The Court notes that this matter had been set for a five-day

trial with the first day taken solely to resolve all preliminary matters so that voir dire of the jury could begin promptly at 9:00 a.m.

7. The Court notes that the defendant appeared in Court on November 28, 1989 at precisely 9:45 a.m., forty-five minutes late for his trial.

8. If the defendant would have been represented by an attorney, the voir dire proceedings could have begun at 9:00 a.m. with or without the presence of the defendant. The defendant also could have had a family member or someone else pick up the tapes and deliver them to the Court.

9. The Court finds that the defendant intentionally failed to appear at 9:00 a.m. on November 28, 1989 with the express intention of delaying the Court and claiming some irregularity after the Court had taken the normal steps and procedures when a defendant fails to appear as ordered. The Court noting that the term "as ordered" specifically involves appearing at the time designated and ordered by the Court. The defendant in his petition for Writ of Habeas Corpus alleges that a disqualified prosecuting attorney, Steven M. Sims, attempted to tamper with the jury on November 27, 1989. The defendant further presented, during the hearing but did not file with the Court, a Motion for Mistrial based on an allegation of jury tampering, however the defendant has failed to support this allegation with any credible facts. However the Court finds that this to be another apparent tactic or strategy on behalf of the defendant to delay his trial contrary to his assertions in hearings that he wanted his trial to proceed.

10. The defendant in trial and in his pleadings in this case has made numerous references and speculations to some perceived conspiracy involving the police and the prosecuting attorney's office and the Court and judges and court personnel. The Court finds that there is absolutely no evidence of any conspiracy. The only place a conspiracy is perceived to exist is between the defendant's ears.

11. The Court finds the defendant has misinterpreted statements, misconstrued statements, made wholly false allegations and when appearing in Court on November 28, 1989, claimed to have made statements to Susan O'Malley which in fact did not occur.

12. The Court finds that the only way to insure the defendant's appearance on the date and at the time scheduled for trial is by the defendant's incarceration. That the current incarceration of the defendant is justified because of the defendant's violation of the terms of a bond and an earlier revocation of bond and by the defendant's failure to appear as ordered by the Court on November 28, 1989.

13. The defendant filed a Motion for Speedy Trial in December of 1989. The Court has facilitated the defendant by setting his trial for February 5, 1990. The Court finds that entry of a judgment in the amount of the bail bond in the sum of $20,000.00 would result in an undue hardship on the defendant's family as co-sureties on the bond. The Court finds that a $20,000.00 bond was the original bond set in this matter with the Court having heretofore released a $40,000.00 bond. The Court further finds that a $20,000.00 bond in some aspect, was excessive in light of the fact that only four (4) B Misdemeanor counts remained after the Court dismissed the felony charges. The Court finds that IC 35-33-8-7 instructs the Court to immediately enter judgment without pleadings, without change of judge or change of venue against the defendant for the amount of the bail bond, if the Court finds that there was not justification for the defendant's failure to appear. The Court Specifically finds that there was not justification for the defendant's failure to appear forty-five (45) minutes late for his trial.

14. The Court finds that the delay caused by the defendant resulted in some expense to the State of Indiana for paying for jury appearances and other related costs of providing the defendant with trial. The Court finds that $2,000.00 which is equal to the amount of the defendant's deposit is a reasonable amount for the Court to enter judgment on based on the facts and circumstances associated with this case.

CONCLUSIONS OF LAW

1. IC 35-33-8-1 through IC 35-33-8-7 apply to the defendant's bond.

2. The defendant's bond was posted under IC 35-33-8-3(a)(2).

3. The Court revoked the defendant's bail on the clear and convincing proof that the defendant failed to appear before the Court as ordered at a critical state of the proceedings as provided by I.C. 35-33-8-5(b)(4).

4. IC 35-33-8-7 controls the procedure for forfeiture and entry of judgment.

5. That the above-referred-to statutes do not create a specific guideline for a court **in the event a defendant does not appear as ordered with reference to the time but later on that day** or at a later date, **surrenders himself to the Court.*** There appears to be a harsh disparity between the forfeiture and judgment provisions provided for on a cash-deposit bond as compared to the late-surrender fees and opportunities as provided by the surety bond provisions for a graduated late-surrender fees under the provisions of IC 27-10-2-12.

6. The issue of direct contempt is found in IC 34-4-7-1. However the Court notes that on November 28, 1989, the Court made a reference that the defendant's action in appearing late was probably contempt, however the Court did not enter any sanction for the defendant's contempt in light of the Court revoking the defendant's bond.

7. The Supreme Court of Indiana in *Engle v. State,* 467 N.E. 2nd 712 (Ind.1984) held: A defendant may represent himself if he so desires. In such a situation, he must accept the burdens and hazards incident to his position. *Blanton v. State,* (1951) 229 Ind. 701, 703, 98 N.E. 2d 186, 187. The specific burden appellant faces here is that his incarceration prevented him from conducting an investigation of his own case. The State has the right to incarcerate a person prior to trial in order to insure his presence at trial. Appellant's incarceration cannot serve as the basis of a right to a private investigator at public expense in this situation because he chose to dispense with court-appointed pauper counsel. Such counsel would have conducted an investigation of the case for him. Appellant's inability to have his case investigated is a self-impose limitation. We will not hear him now complain of these burdens and hazards he could have easily avoided.

8. There is no statutory or case authority requiring a Court to reinstate or set a new bond in a situation where a defendant has twice violated the conditions of bond including a violation of the defendant's failure to appear as ordered by the Court. It is within the province of a Court to control the flow of a trial and to not tolerate unreasonable delays created by a party. The Court must insure the responsible and expedient disposition of disputes and insure that the Courts do not simply become a playground for overzealous or emotionally disabled persons.

IT IS THEREFORE ORDERED ADJUSTED AND DECREED by the Court that the defendant's Writ of Habeas Corpus is denied. Judgment is entered on the forfeiture of the defendant's bond in the sum of Two-Thousand Dollars ($2,000.00). The Court orders the Clerk to transfer the $2,000.00 cash deposit to the State Common School Fund. The Court further denies the defendant's motion to set a new bond. The Court orders the defendant to be held in custody and to be brought to Court at the date and time set for his trial.

Dated: December 27, 1989

/s/ John W. Forcum

John W. Forcum, Special Judge
Allen County Superior Court No. 4

* [*Emphasis added*]

STATE OF INDIANA)		IN THE ALLEN SUPERIOR COURT
)	SS:	COURT - NO. 4
ALLEN COUNTY)		1989 TERM
STATE OF INDIANA)		
)		
vs.)		
)		
LIEU B. HOANG)		CAUSE NO. 02DO4-8709-CF-474

ORDER

Comes now the Court on its own motion, pursuant to IC 35-36-3-1 based on the testimony, argument and demeanor of the defendant in Court and related to this case, the Court believes there are reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of his defense. Those grounds include the following:

1. Although the defendant has claimed to have a law degree from a university in Saigon and has on other occasions to have been a professor of law at the University of Saigon, the defendant has difficulty in understanding and interpreting Indiana statutes and case law as they pertain to his case. The defendant has some difficulty in communicating in the English language and making himself understood, particularly when the defendant becomes emotional. The defendant has not provided any evidence to support his claims to a law degree or to a professorship and the Court questions whether or not these assertions are delusions or figments of the defendant's imagination.

2. The defendant has demonstrated his inability to develop a working and meaningful relationship with the attorneys of record and now insists on representing himself, despite the complications that self-representation has created for the defendant. The defendant has indicated in Court that he cannot trust any attorney and feels that the attorneys would join in some conspiracy against him.

3. The Court notes the defendant in his pleadings and in his court statements makes reference to some belief on his part as to a grand conspiracy involving prosecuting attorneys, judges, this judge and prior judges on the case, as well as court staff, defense attorneys and that he cannot trust anyone, including members of his family. The Court has observed no evidence of any conspiracy and is concerned that the defendant's accusations may result from personality disorders.

4. The defendant continually misstates and misrepresents conversations and instructions. It often appears that the denfendant is operating in a reality solely created in his mind.

5. The defendant on numerous occasions makes reference to the Indiana Supreme Court or the Federal Courts agreeing with him and ruling prior to any actions pending with those courts. This is evidenced by a letter by the defendant dated October 23, 1989 and attached hereto as Exhibit A.

6. The defendant frequently makes reference to Federal actions and indictments that he is obtaining against the prosecuting attorney and other persons connected with the case. The Court has no evidence of any investigation or action by Federal authorities on behalf of the defendant.

7. The defendant has exhibited in court compulsive behavior and shown disrespect for the Court and the Court process which could have resulted in his being found in contempt of court.

8. Attached hereto and marked Exhibits B, C, D and E are pleadings and documents signed and filed by the defendant which demonstrate an irrational and unfounded belief in a conspiracy.

The Court being concerned that the defendant's comprehension and ability to stand trial is based on whether or not he can assist in the preparation of his defense. The test of an accused's competency having been stated as whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has rational as well as factual understanding of proceedings against him. The Court notes that the defendant has been unable to maintain any reasonable relationship with the attorneys of record and now apparently believes that no attorney could reasonably or adequately represent him. It is on these grounds that the Court sets a hearing on defendant's comprehension to stand trial for January 26, 1990, at 1:15 p.m. and the Court appoints the following psychiatrists to examine the defendant and testify at said hearing: Dr. Ludwig G. Heinemann and Dr. Jay D. Fawver.

Dated: December 28, 1989

/s/ John W. Forcum

John W. Forcum, Special Judge
Allen Superior Court No. 4

INDIANA CODE 35-36-3-1

Ability to Understand and Assist in Proceedings - Hearing Appointment of Medical Experts - Admission of other Evidence Procedure on Finding of Inability

(a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of his defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested psychiatrists, psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology, or physicians, at least one (1) of whom must be a psychiatrist, who shall examine the defendant and testify at the hearing as to whether he can understand the proceedings and assist in the preparation of his defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of his defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of his defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the department of mental health, to be confined by the department in an appropriate psychiatric institution.

[*IC 35-36-3-1, as added by Acts 1981, P.L. 298, § 5; P.L. 321-1983, § 3; P.L. 19-1986, § 60.*]

INDIANA CODE 35-36-3-2

Resumption of Proceedings upon Attainment of Ability

Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of his defense, the department of mental health, through the superintendent of the appropriate psychiatric institution, shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court may enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of his defense. Upon the return to court

of any defendant committed under section 1 [35-36-3-1] of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

[*IC 35-36-3-2, as added by Acts 1981, P.L. 298, § 5.*]

INDIANA CODE 35-36-3-3

Substantial Probability of Attaining Ability Within Foreseeable Future - Certification to Court Temporary Retention of Defendant

Within ninety [90] days after a defendant's admittance to a psychiatric institution, the superintendent of the psychiatric institution shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of his defense within the foreseeable future. If a substantial probability does not exist, the department of mental health shall initiate regular commitment proceedings under IC 16-14-9.1. If a substantial probability does exist, the department of mental health shall retain the defendant:

(1) Until he attains the ability to understand the proceedings and assist in the preparation of his defense and is returned to the proper court for [trial]; or

(2) For six [6] months from the date of his admittance; whichever first occurs.

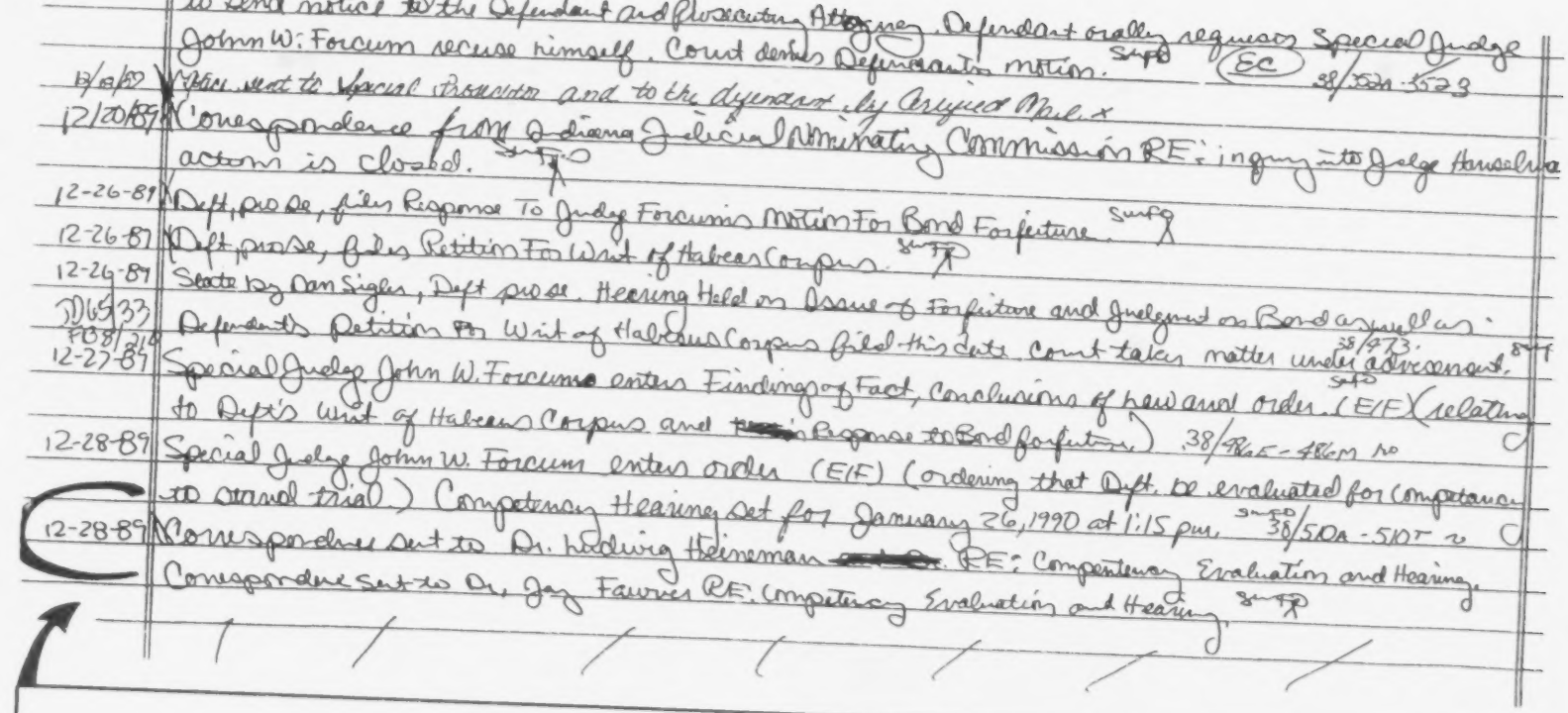
[*IC 35-36-3-3, as added by Acts 1981, P.L. 298, § 3.*]

INDIANA CODE 35-36-3-4

Institution of Regular Commitment Proceedings

If a defendant who was found under section 3 [35-36-3-3] of this chapter to have had a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of his defense has not attained that ability within six [6] months after the date of his admittance to a psychiatric institution, the department of mental health shall institute regular commitment proceedings under IC 16-14-9.1.

[*IC 35-36-3-4, as added by Acts 1981, P.L. 298, § 5.*]



to send notice to the Defendant and Prosecuting Attorney. Defendant orally requests Special Judge John W. Forcum recuse himself. Court denies Defendants motion. SUFD EC 38/1331-1523

12/8/89 Mailed sent to Special Prosecutor and to the defendant by Certified Mail. x

12/20/89 Correspondence from Oklahoma Judicial Administrating Commission RE: inquiry into Judge Hansel's actions is closed. SUFD

12-26-89 Deft, pro se, files Response To Judge Forcum's Motion For Bond Forfeiture. SUFD

12-26-89 Deft, pro se, files Petition For Writ of Habeas Corpus. SUFD

12-26-89 State by Dan Sigler, Deft pro se. Hearing Held on Issue of Forfeiture and Judgment on Bond as well as Defendants Petition for Writ of Habeas Corpus filed this date. Court takes matter under advisement. 38/973. SUFD

12-27-89 Special Judge John W. Forcum enters Findings of Fact, Conclusions of Law and Order (E/F) (relating to Deft's Writ of Habeas Corpus and Response to Bond forfeiture) 38/986-988 SUFD

12-28-89 Special Judge John W. Forcum enters order (E/F) (ordering that Deft. be evaluated for competency to stand trial) Competency Hearing set for January 26, 1990 at 1:15 pm. SUFD 38/500a-501a

12-28-89 Correspondence sent to Dr. Ludwig Heineman [sic] RE: Competency Evaluation and Hearing. Correspondence sent to Dr. Jay Fawver RE: Competency Evaluation and Hearing. SUFD

12-28-89 Correspondence sent to Dr. Ludwig Heineman [sic] RE: Competency Evaluation and Hearing.
Correspondence sent to Dr. Jay Fawver RE: Competency Evaluation and Hearing.

ALLEN SUPERIOR COURT
Allen County Courthouse
Fort Wayne, Indiana 46802

December 28, 1989

Dr. Jay D. Fawver
Citadel Psychiatric Clinic
2001 Reed Road
Fort Wayne, IN 46815

Re: Lieu Hoang, 02D04-8709-CF-474

Dear Dr. Fawver,

As we discussed on the telephone this afternoon, Allen Superior Court Special Judge John Forcum, has ordered an evaluation of Mr. Lieu Hoang, to determine Mr. Hoang's competency to stand trial. This case is special in that Mr. Hoang will not be assisting counseling in his defense, but will be acting a counsel in his own defense.

A defendant's competency to stand trial is composed of two essential elements: (1) the ability of the defendant to understand the nature of the charges against him, and (2) the ability of the defendant to assist his counsel in the preparation of his defense, or in this instance the ability of the defendant to prepare his own defense. As Mr. Hoang is respresenting himself, one other consideration is the ability of the defendant to aid in his defense at trial.

Enclosed please find a copy of the Judges order for examination with included exhibits. Also enclosed are copies of the Affidavit for Probable Cause and the Information in order to assist you in your consideration.*

An appointment for Mr. Hoang has been made with your secretary for January 8, 1990 at 3:00 p.m. The sheriff will transport the defendant to your office just prior to his appointed time.

A hearing on defendant's competency to stand trial is set for January 26, 1990 at 1:15. The hearing will be held on the third floor of the Allen County Courthouse. On January 26th please come to room 314 which is across from the main staircase and to the left. We look forward to seeing you. Thank you for your help.

* [*Emphasis added*]

Sincerely,

/s/ Suzanne O'Malley

Suzanne O'Malley,
Criminal Law Clerk
Allen Superior Court

Encl.
[*Please see A. 33, 29 & 16*]

ALLEN SUPERIOR COURT
Allen County Courthouse
Fort Wayne, Indiana 46802

December 28, 1989

Dr. Ludwig G. Heinemann
Park Center, Building C
909 East State Street
Fort Wayne, IN 46805

Re: Lieu Hoang, 02D04-8709-CF-474

Dear Dr. Heinemann:

As I discussed with Dr. Rathbun on the telephone this afternoon, Allen Superior Court Special Judge John Forcum has ordered an evaluation of Mr Lieu Hoang to determine Mr Hoang's competency to stand trial. This case is special in that Mr Hoang will not be assisting counseling in his defense, but will be acting a counsel in his own defense.

A defendant's competency to stand trial is composed of two essential elements: (1) the ability of the defendant to understand the nature of the charges against him, and (2) the ability of the defendant to assist his counsel in the preparation of his defense, or in this instance the ability of the defendant to prepare his own defense. As Mr. Hoang is respresenting himself, one other consideration is the ability of the defendant to aid in his defense at trial.

In order to assist you in your examination enclosed is a copy of the Judge's order for examination with included exhibits. Also enclosed are copies of the Affidavit for Probable Cause and the Information.*

An appointment for Mr. Hoang has been made with your office for January 16, 1990 at 3:30 p.m. The sheriff will transport the defendant to your office just prior to his appointed time.

A hearing on defendant's competency to stand trial is set for January 26, 1990 at 1:15. Due to your staff meeting we will not expect you until 2:30. If you are able to come earlier then [sic] 2:30 that would be fine. The hearing will be held on the third floor of the Allen County Courthouse. On January 26th please come to room 314 which is across from the main staircase and to the left. We look forward to seeing you. Thank you for your help.

* [*Emphasis added*]

Sincerely,

/s/ Suzanne O'Malley
Suzanne O'Malley,
Criminal Law Clerk, Allen Spr. Ct.

Encl.
[*Please see A. 33, 29 & 16*]

INDIANA CODE 35-36-2-3

Verdict: Findings as To Insanity

In all cases in which the defense of insanity is interposed, the jury (or the court if tried by it) shall find whether the defendant is:

(1) Guilty;

(2) Not guilty;

(3) Not responsible by reason of insanity at the time of the crime; or

(4) Guilty but mentally ill at the time of the crime.

[*IC 35-36-2-3, as added by Acts 1981, P.L. 298, § 5.*]

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE No. 02D04 - 8709 - CF - 474

STATE OF INDIANA)
)
vs.) RECORD OF PROCEEDINGS
)
LIEU B. HOANG)

Relevant Excerpts from the Transcript of
THE JANUARY 26, 1990 COMPETENCY HEARING
JAY D. FAWVER UNDER CROSS-EXAMINATION

Present: Daniel J. Sigler, John W. Forcum, Ludwig G. Heinemann and Lieu B. Hoang. Court Reporter: Dorothy P. McClymonds.

HOANG: When did you receive the correspondence from the Court that's in the letter from Suzanne O'Malley, and the motion and order from Judge Forcum?

FAWVER: The day after the interview with you.

(Original Transcript: P. 25, L. 18 to P. 26, L. 2)

(Which was January 9, 1990 to hide the fact that he had tailored his report based on their idea, in Forcum's order of December 28, 1989, that Hoang was mentally ill. Their own record, See A. 35, indicated that it was sent to him on that December 28, 1989)

HOANG: ... Did you believe that when you read his order?

FAWVER: I believed it after I read it, but by that time my report was written.

(Original Transcript: P. 55, L. 13 to 16)

(So he perjured again that he received nothing in writing until Hoang confronted him with one of the evidence of his receiving those)

HOANG: Do you have any, receiving any, any problem of receiving the mail?

FAWVER: I received nothing in writing until the day after I interviewed you.

HOANG: But are you aware of the letter they sent you, they sent it to you on December the 28th?

FAWVER: No. You will have to tell me what that letter was?

HOANG: The letter from Suzanne O'Malley, which I've got a copy right here. I'd like to exhibit it. (*See* A. 36)

Suzanne O'Malley's letter: Exhibit No. A. Can you tell the Court, for the record, what does this letter say?

FAWVER: Yes. I did receive this letter prior to my interviewing you. *(Original Transcript: P. 32, L. 1 to 19)*

(But Fawver still lied under oath again that he received only O'Malley's letter which was the cover letter stating that other materials were enclosed including Forcum's misleading order from which he got the idea of "Hoang's mental illness". Fawver even lied that O'Malley's cover letter did not come in the same envelope with the other materials until Hoang confronted him with the evidence again)

HOANG: But just minutes earlier, I asked you if you received any correspondence from the Court and you said you did not receive any until after, the day after you interviewed me?

FAWVER: Correspondence concerning your reason for incarceration and the purpose behind my interviewing you for competency.

HOANG: I --- oh, this one? *(Forcum's misleading order)*

FAWVER: Correct.

HOANG: You received after that?

FAWVER: I received that one day after I interviewed you.

HOANG: And you received this one *(O'Malley's cover letter)* maybe a day before that?

FAWVER: I received the order to interviewing you prior to interviewing you.

HOANG: They did not come in the same envelope?

FAWVER: No, they didn't.
(Original Transcript: P. 33, L. 10 to P. 34, L. 7)

(After marking those materials as Defendant's Exhibits)

HOANG: Dr. Fawver, according to your testimony that I just heard, you received this one before you interviewed me.

SIGLER: Which one?

HOANG: It would be Exhibit A, the letter from Suzanne O'Malley? Your answer was what?

FAWVER: To the best of my recollection, I did. That's the one where it refers to requesting that I evaluate you for the purpose of your ability to stand trial and to defend yourself and understanding the mature of the charges. I don't know exactly what day I received that, but I believe I received that one before.

(Original Transcript: P. 37, L. 18 to P. 38, L. 9)

(Hoang then showed Fawver paragraph 3 of O'Malley's cover letter that stated: "Enclosed please find a copy of the Judge's order...", See A. 36, Fawver was so panic that he looked at both Sigler and Forcum who shook their heads indicating negative that Fawver perjured again for the sixth time that)

FAWVER: After reading that letter just now, I believe I'm probably --- I probably received that afterwards. The reason I say that is because on that letter, it says enclosed please find the exhibits ---

HOANG: I know why. *(Original Transcript: P. 38 L. 16 to 20)*

(Fawver then flipped out that there was another letter)

HOANG: But, for the record, you did state before, quoting, that you did receive this one *(O'Malley's cover letter)* before you interviewed me, is that correct?

FAWVER: I believe that I did, but that wasn't the letter that I was thinking about. *(Original Transcript: P. 40, L. 4 to 8)*

(which could be the paid off that Forcum quickly denied)

FORCUM: Mr. Hoang, there is nothing in the record to even suggest that there was another letter.

(Original Transcript: P. 42, L. 19 to 21)

(And so Fawver had admitted the following)

HOANG: So your idea here just coincidentally consistent with Judge Forcum's idea and the so-called Special Prosecutor's idea, is that correct?

FAWVER: I feel that it goes beyond a coincidence.

(Original Transcript: P. 52, L. 10 to 14)

* * * * *

STATE OF INDIANA)		IN THE ALLEN SUPERIOR COURT
) SS:		
COUNTY OF ALLEN)		CAUSE No. 02D04 - 8709 - CF - 474
STATE OF INDIANA)		
)		
vs.)		RECORD OF PROCEEDINGS
)		
LIEU B. HOANG)		

Relevant Excerpts from the Transcript of
THE JANUARY 26, 1990 COMPETENCY HEARING
LUDWIG G. HEINEMANN UNDER CROSS EXAMINATION

Present: Daniel J. Sigler, John W. Forcum and Lieu B. Hoang. Court Reporter: Dorothy P. McClymonds.

(Having the benefit of testifying after Fawver and seeing him lying around under cross-examination by Hoang, See A. 39, Heinemann in turn admitted not only receiving the misinformation from them but also the reason he found Hoang incompetent to stand trial was said misinformation he received. But it was not easy because both Forcum and Sigler had tried hard to signal Heinemann to deny those as follows)

HOANG:	... [M]y question is this: The reason you (Heinemann) found me incompetent to stand trial is just because the Indiana Commission on Judicial Qualifications refused to prosecute a judge whom I filed a Complaint against? Just yes or no.
FORCUM:	Mr. Hoang, for my clarification, are you asking the question is that the only reason?
HOANG:	I'm asking whether that's the reason, not the only reason, your honor. I am asking if that's the reason because --
FORCUM:	The reasons or a reason?
HOANG:	Because I saw on this letter, he says the reason--
FORCUM:	Mr. Hoang, we just need to clarify the question. Are you asking if that is a reason, one of multiple reasons, or is that the only reason?
HOANG:	I know what you tried to do, Your Honor, okay?

Before I answer the question, before clarifying, I would like to ask him this... how many reasons did you have in your report?. I see only one. I don't see any other reason?

SIGLER: Now, he is answering his own question, Judge. He can't.

HEINEMANN: Okay. I'll give you the answer. The answer is yes. *(Original Transcript: P. 81, L. 9 to P. 82, L. 20)*

. . . . . .

HOANG: ... What's the other reason would you list on your report that I suffer from Persecutory delusion besides the letter from the Indiana Commission on Judicial Qualifications?.

HEINEMANN: You're asking do I have other reasons?

HOANG: Yes. Any other reason, I want you to answer yes or no, which you have listed in your report?

HEINEMANN: No. *(Original Transcript: P. 105, L. 10 to 19)*

(Under further cross-examination by Hoang, Heinemann also had to tell who had fed him such misinformation)

HOANG: The next question is this: Who sent you the letter, a copy of the letter from the Indiana Commission on Judicial Qualifications?

HEINEMANN: I don't know.

HOANG: You don't know! Okay. Look at the letter and tell me who sent it to you?

SIGLER: Well, if it's in evidence it speaks for itself.

FORCUM: I don't believe any of the exhibits have been offered.

SIGLER: Oh, okay.

HOANG: Is that the Court, Allen Superior Court sent it to you?

HEINEMANN: Pardon?

HOANG: Is that the Allen Superior Court who sent it to you?

HEINEMANN: Oh, I'm sure it's nobody else.

HOANG: I'd like you to specify who is the person?

HEINEMANN: If you're asking me about a particular person, I don't think I have that Knowledge.

HOANG: Who signed the name on the letter [that was] sent to you on December 28th?

HEINEMANN: I don't...

HOANG: I'm asking you to look.

HEINEMANN: On the cover letter?

HOANG: Yes.

HEINEMANN: You have just taken that from me.

HOANG: Okay, I'm sorry. I will give them back to you so you can know who sent you that letter. Can you specify what the name is on the letter?

HEINEMANN The cover for the Court order was signed by Suzanne O'Malley, Criminal Law Clerk, Allen Superior Court.

HOANG: Okay. That's good enough. Thank you. And I'm asking you to look at Exhibit B and tell me whether or not that letter is in Exhibit B?

HEINNEMANN: Yes.

HOANG: You found the letter?

HEINNEMANN: Yes.

HOANG: And it was part of the order?

HEINEMANN: It's part of Exhibit B as numbered in the Court order.

HOANG: Yes. Who signed on the Court order?

HEINEMANN: Again, Judge Forcum.

HOANG: And who is Judge Forcum? Is he in Court today?

HEINEMANN: Yes.

HOANG: And is he the presiding Judge for the hearing today?

HEINEMANN: Yeah. (*Orgl Transcript: P. 83, L. 1 to P. 85, L. 11*)

* * * * *

STATE OF INDIANA)		IN THE ALLEN SUPERIOR COURT
)	SS:	
COUNTY OF ALLEN)		CAUSE No. 02D04 - 8709 - CF - 474
STATE OF INDIANA)		
)		
vs.)		RECORD OF PROCEEDINGS
)		
LIEU B. HOANG)		

Relevant Excerpts from the Transcript of
THE JANUARY 26, 1990 COMPETENCY HEARING
THE TESTIMONY OF Hon. ALFRED W. MOELLERING
Judge of Allen Superior Court

Present: Daniel J. Sigler, John W. Forcum and Lieu B. Hoang
Court Reporter: Dorothy P. McClymonds.

DIRECT EXAMINATION

HOANG:	Will you state your full name for the record please?
MOELLERING:	Alfred W. Moellering.
HOANG:	And what is your occupation?
MOELLERING:	Judge of the Allen Superior Court.
HOANG:	How long have you been a judge?
MOELLERING:	Nineteen years.
HOANG:	Your Honor, do you recall ever seeing me in your Court?
MOELLERING:	You appeared in the Misdemeanor and Traffic Division of the Allen Superior Court on two separate trials in front of me last year, is that what you mean?
HOANG:	Yes, Your Honor.
	. . . . .
HOANG:	And was I represented by counsel for those cases?

MOELLERING: No. You weren't entitled to appointed counsel and you didn't hire counsel so you appeared pro se.

HOANG: During the proceedings, did you have any trouble to understand me?

MOELLERING: No. I don't have any trouble understanding very many people.

HOANG: ... Did you believe, during the proceedings, that I had any trouble to understand you?

MOELLERING: That you had trouble to understand me?

HOANG: Yes sir.

MOELLERING: No. Not that I'm aware of.

HOANG: I was just like any other normal person appearing in your Court?

MOELLERING: Well, I wouldn't say that. You suffer from the same disease that frequently lawyers who appear in front of me suffer from; namely diarrhea of the mouth. Primarily because I found you not guilty on both counts for the simple reason that the State failed to prove you guilty of either one, but you didn't have enough sense to quit while you were ahead until I repeatedly told you so. Isn't that correct?

HOANG: Yes, Your Honor.

MOELLERING: All right.

HOANG: That's correct. So I pursued by case very hard, is that correct?

MOELLERING: Well, I don't know if you would call it very hard. You pursued it certainly with more than sufficient vigor, probably to the point of overdoing it.

HOANG: So, in your opinion, when my opponent fell I kept kicking and pushing?

. . . . . .

MOELLERING: Your opponent fell --- no. It's just that, as is typical in this country, the State failed to prove

you guilty beyond a reasonable doubt. Their record having been less than fifty percent convictions of anything they tried in Court anyhow. So the point is I don't know that that proves that you were better or worse because they are accustomed to losing cases simply because they don't know what they need to prove in order to convict someone.

HOANG: But I was competent to stand the two trials that you mentioned?

SIGLER: Objection. That is a leading question.

. . . . . .

HOANG: Let me rephrase my question, Your Honor?

FORCUM: You may rephrase the question.

HOANG: Was I competent to stand trial?

MOELLERING: Oh certainly. Certainly you were competent to stand trial.

. . . . . .

HOANG: About my skill in presenting cases before you, was it all right?

MOELLERING: Well, that left a little to be desired as I've already indicated. I think you understand what I'm talking about.

HOANG: Yes, Your Honor.

MOELLERING: I told you you were your worst enemy if I recall. Do you remember me saying that to you?

HOANG: Yes, Your Honor.

MOELLERING: And I told you why don't you shut up, you've got the case won, and you finally listened and then there was a ruling in your favor. Do you recall that?

HOANG: Yes, Your Honor.

MOELLERING: In both cases, right?

HOANG: Yes, Your Honor.

HOANG: Do you believe that, this is what I think, you are the most impartial judge around here?

SIGLER: Is that a question?

MOELLERING: Yeah, I don't know. I'm fearful of answering for fear that I will tread upon the heel of attorneys or something. So I'm not about...

SIGLER: You won't get any cross on that, judge, from me.

MOELLERING: Okay. Okay.

HOANG: And my next question is if Judge Forcum on mutual agreement would disqualified himself, would you re-accept the jurisdiction of my cases?

MOELLERING: No, no, no. Your're not euchring me into a position like that. No, thank you. I didn't take a change of judge in this case. You did.

HOANG: No, [they did]. I wouldn't change of the judge on you. If I have you for judge, I wouldn't change, I'd keep it.

MOELLERING: Well, I know, but I can't try all the cases in this county.

SIGLER: This questioning is all irrelevant, Your Honor, on this point from a couple questions ago.

FORCUM; The objection is sustained.

HOANG: Your Honor, I appreciate your coming. No further questions.

MOELLERING: All right.

HOANG: Thank you very much, Your Honor.

FORCUM: Do you have any cross examination?

SIGLER: No, Your Honor.

FORCUM: Thank you, You may step down.

(Original Transcript: P. 111 to P. 120)

WITNESS EXCUSED

* * * * *

STATE OF INDIANA)		IN THE ALLEN COUNTY SUPERIOR
)	SS:	COURT - NO. 4
ALLEN COUNTY)		1990 TERM
STATE OF INDIANA)		
vs.)		CAUSE NO. 02D04-8709-CF-474
LIEU B. HOANG)		

Order Determining Lack of Capacity to Stand Trial

The State of Indiana appears by Daniel Sigler, Special Prosecuting Attorney, and the defendant appears in person and this cause coming on to be heard upon the issue of the defendant's present comprehension to understand the nature of the criminal action against him and the proceedings thereon, and to make his defense, the evidence is submitted and concluded and the Court, being duly advised thereby, now finds:

That the two court-appointed disinterested psychiatrist, Jay D. Fawver, M.D. and Ludwig G. Heinemann, M.D. reported and testified that in their opinion the defendant currently does not have the capacity to stand trial. The Court further finds that the defendant presently does not have comprehension sufficient to make a defense to this criminal action against him. Proceedings in this case shall be delayed and continued and defendant is hereby committed to the Department of Mental Health, State of Indiana, to be confined by said Department in an appropriate psychiatric institution. The Superintendent thereof shall certify to this Court within ninety (90) days whether the defendant has a substantial probability of attaining comprehension sufficient to understand the proceedings herein and make a defense thereto within the foreseeable future. [IC 35-36-3-3]

If substantial probability of comprehension does not exist, the Department shall initiate regular commitment proceedings. If substantial probability of comprehension does exist, the Department shall retain custody of the defendant until such comprehension is attained, for a period not exceeding six (6) months after defendant's admittance. If such comprehension has not been attained within the six (6) month period, the Department of Mental Health shall institute regular commitment proceedings in the proper court. [IC 35-36-3-4]

The Sheriff of Allen County, Indiana, upon oral notification by the Court, shall comply with and perform all things appropriate to implement this order.

So **Ordered** this 31st day of January, 1990.

/s/ John W. Forcum

John W. Forcum, Special Judge

PLEASE before the Hon. JOHN F. SURBECK, JR., Judge of the Allen Superior Court, State of Indiana, at a regular term of said Court, held at the Courthouse in the City of Fort Wayne, County of Allen, State of Indiana, to wit:

STATE OF INDIANA

VS.

LIEU B. HOANG

02D04-8709-CF-474

BE IT REMEMBERED, that on the 2nd day of March A.D., 19 90, the same being the Judicial day of the 19 90 Term of said Court, held at the said Courthouse, before the Honorable Judge aforesaid, the following TRANSPORT ORDER was made in the above entitled cause by said Court to wit:

The Sheriff of Allen County is now ordered to transport the Defendant from Allen County Confinement Facility to Logansport State Hospital on March 5, 1990.

PLEASE before the Hon. JOHN F. SURBECK, Jr., Judge of Allen Superior Court, State of Indiana, at a regular term of said Court, held at the Courthouse in the city of Fort Wayne, County of Allen, State of Indiana, to wit:

STATE OF INDIANA

vs.

02D04-8709-CF-474

LIEU B. HOANG

BE IT REMEMBERED, that on the 2nd day of March A.D., 1990, the same being the... judicial day of the 1990 term of said Court, held at the said Courthouse, before the Honorable Judge aforesaid, the following TRANSPORT ORDER was made in the above entitled cause by said Court to wit: The Sheriff of Allen County is now order to transport the Defendant from Allen County Confinement Facility to Logansport State Hospital on March 5, 1990.

RULE 4

INDIANA RULE OF APPELLATE PROCEDURE

CONSIDERATION OF APPEALS

(A) ... The Supreme Court (of Indiana) shall have exclusive jurisdiction of:

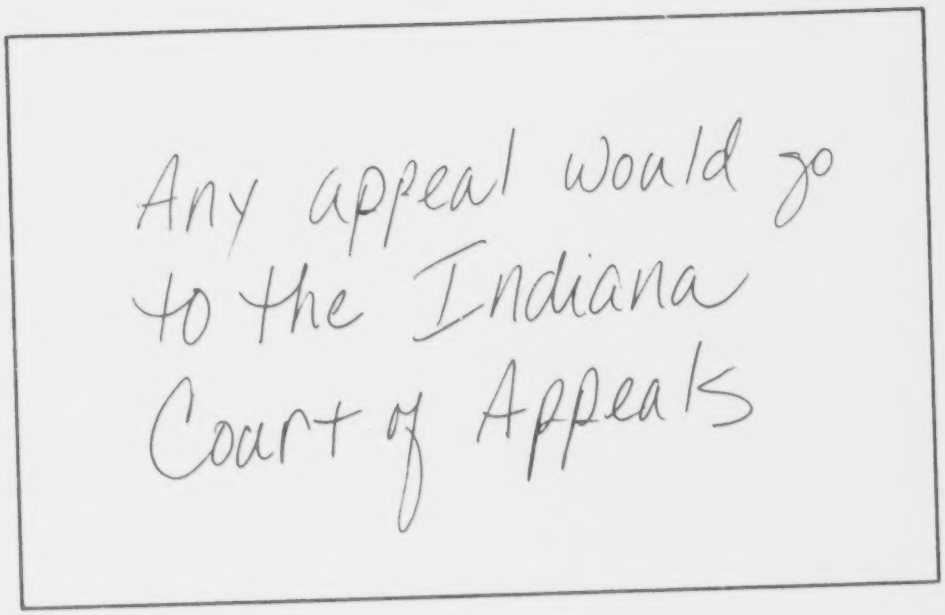
. . . . . .

(9) Appeal from the denial of release in habeas corpus cases arising out of criminal, extradition, or mental health proceedings.

. . . . . .

---

* * * * *



Any appeal would go
to the Indiana
Court of Appeals

(The above note to Hoang was written by Deputy Clerk of the Indiana Supreme Court and Court of Appeals Kim Pollard who was instructed not to accept Hoang's Brief for Appellant unless it was captioned with the Court of Appeals of Indiana)

IN THE
COURT OF APPEALS OF INDIANA
THIRD DISTRICT

LIEU B. HOANG,	)	
	)	
Appellant *(Defendant Below)*	)	
	)	
v.	)	No. 02A03-9001-CR-22
	)	
STATE OF INDIANA,	)	
	)	
Appellee *(Plaintiff Below)*	)	

ORDER DISMISSING APPEAL

Lieu B. Hoang brings this appeal from an order entered in the Allen Superior Court which denied his petition for writ of habeas corpus. The petition for writ of habeas corpus was brought in response to Hoang's incarceration pending trial on four misdemeanor counts. Because Hoang seeks relief from the denial of his petition for writ of habeas corpus, we conclude that jurisdiction over this cause of action lies with the Indiana Supreme Court. *See* Indiana Rules of Procedure, Appellate Rule 4 (A) (9) *("The Supreme Court shall have exclusive jurisdiction of. . . appeal from the denial of release in habeas corpus cases arising out of criminal, extradition, or mental health proceedings").* Hoang's appeal to this Court should be dismissed and it shall be so ordered.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the appeal filed herein under the name and style of *Lieu B. Hoang v. State of Indiana* under Cause Number 02A03-9001-CR-22 be and the same hereby dismissed.

/s/ Jonathan J. Robertson
Acting Chief Judge

Dated this 26th day of April, 1990

CIRCUIT AND SUPERIOR COURTS
38TH JUDICIAL DISTRICT
ALLEN COUNTY - INDIANA

STATE OF INDIANA, Plaintiff vs. LIEU B. HOANG, Defendant	CAUSE No. 02D04 - 8709 - CF - 474 [X] ORDER OR JUDGMENT OF THE COURT BOOK_____PAGE_____ [ ] DOCKET MAINTENANCE ONLY

6-8-90: Pretrial Conference held. Defendant appeared with counsel Michael K. Sutherlin and attorney Linda Wagoner, State by Special Prosecutor Daniel Sigler. Attorney Linda Wagoner makes oral motion to withdraw. No objection by State. Court grants Attorney Wagoner's Motion to Withdraw. Hearing held on Defendant's Petition to Let to Bail. The court releases Defendant on his own recognizance on the conditions that he maintain a working relationship with his attorney of record, that he maintains notice of his whereabouts with his attorney, that he not violate any State, Local or Federal law, that he does not directly or indirectly contact the victims, and that he does not contact court personnel directly or indirectly.

DATED: June 8, 1990

/s/ John W. Forcum
Special Judge

TRANSCRIPT OF

THE APRIL 28, 1989 INCIDENT

(Traffic noise came from the automotive engines, the siren from a police squad car, the skids from braking and the clicks from Hoang taking the pictures, See A. 49, of their chasing him)

(Skidding noise came from Hoang braking his car to a full stop)

(Noise came from Thomas Taylor, Michael Tippmann and Alan Cook banging at the door of Hoang's car, and then opening it)

TAYLOR: Hey gook, why didn't you stop?

HOANG: Because I don't trust you, stupid idiot.

TAYLOR: Who did you call stupid idiot?

HOANG: Who else?

(Noise came from Taylor and Cook grabbing and pulling Hoang out of his car)

HOANG: I am under arrest or something?

TAYLOR: Right after this. *(From the background)*

(Noise came from Taylor striking Hoang with a nightstick)

HOANG: Ooow!

(Noise came from fighting, from Hoang's falling, from Taylor pounding Hoang with his nightstick, and from Cook beating and kicking Hoang)

TIPPMANN: Don't kill him, guys. We need him alive.

TAYLOR: He's alive. *(From the backgound)* We saved his face for the mug-shot, did we? *(Laughing)*

COOK: He's ... *(Inaudible, from the background)*

TAYLOR: This way. *(From the background)*

TIPPMANN: Alright, see you guys there.

(Noise came from Tippmann stepping inside Hoang's car and searching it while its engine was still running)

(Noise came from Tippmann opening and riffling through the glove compartment that contained papers and cash)

TIPPMANN: Oh! *(Surprising and chuckling)*

(Noise came from Tippmann adjusting the steering wheel and driving Hoang's car away)

(Noise came from Tippman braking and parking the car)

(Noise came from Tippmann turning off the engine by pulling out the key, then opening the car's door, stepping out and closing its door)

(Noise came from Tippmann opening the trunk of Hoang's car, searching it, then closing it and walking away)

. . . . . *(APPROXIMATELY 36 MINUTES LATER)* . . . . .

(Noise came from Michael R. Scheele, Robert Schneider, and Eric J. Hinsey opening the trunk and then the doors of Hoang's car. Noise came from their searching through out Hoang's car)

(Noise came from Scheele or Schneider opening the glove compartment and searching it)

SCHEELE: They said he's loaded.

SCHNEIDER: Should we take these items into evidence?

(Hinsey tried to calm his K-9 dog down from barking)

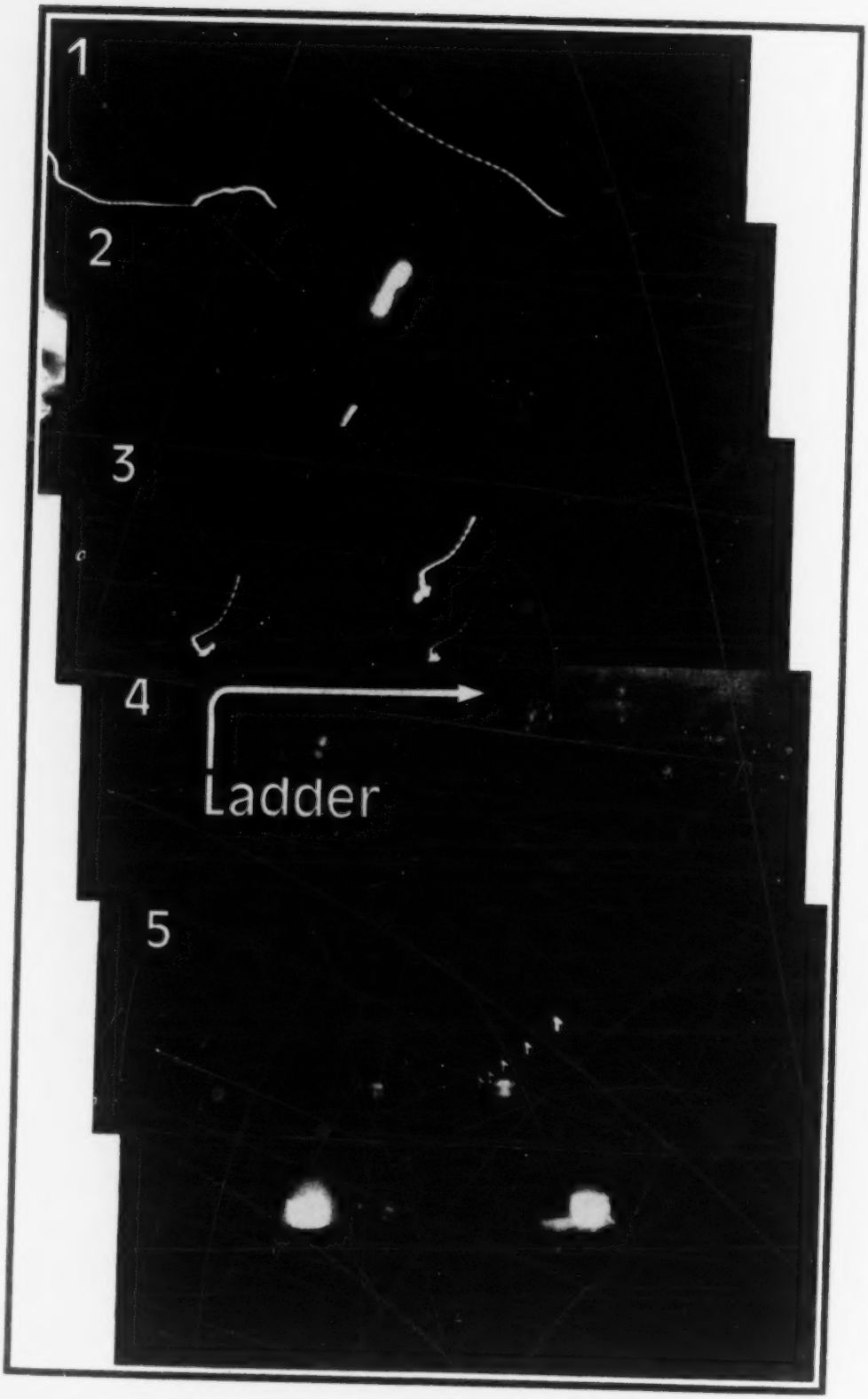
SCHEELE: What are the items?

SCHNEIDER: These news clippings and this map.

SCHEELE: Yeah. They might be helpful.

(The hidden recorder was shut off as its one-hour tape ran out)

(END OF RECORDING)


1
2
3
4
Ladder
5

The above was the condition of Hoang's chest drawn by "Allen County Jail Physician" Jim Chapman after Hoang was taken there.

Such above medical record was either altered or destroyed by them to cover up the incident happened on the night of April 28, 1989.

INDIANA CODE 35-43-2-1

Burglary

Sec. 1. A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or if the building or structure is a dwelling, and a Class A felony if it results in either bodily injury or serious bodily injury to any person other than a defendant.

[*As added by Acts 1976, P.L. 148, Sec. 3. Ammended by Acts 1977, P.L. 340, Sec. 42; Acts 1982, P.L. 204, Sec. 36.*]

INDIANA CODE 35-44-3-3

Resisting Law Enforcement

(a) A person who knowingly or intentionally:

(1) Forcibly resists, obstructs, or interferes with a law enforcement officer or a person resisting the officer while the officer is lawfully engaged in the execution of his duties as an officer;

(2) Forcibly resists, obtructs, or interferes with the authorized service or execution of a civil or criminal process or order of a court; or

(3) Flees from a law enforcement officer after the officer has, by visible or audible means, identified himself and ordered the person to stop; commits resisting law enforcement, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense under subsection (a) is a:

(1) Class D felony if, while committing it, the person draws or uses a deadly weapon, inflicts bodily injury on another person, or operates a vehicle in a manner that creates a substantial risk of bodily injury to another person; and

(2) Class C felony if, while committing it, the person operates a vehicle in a manner that causes serious bodily injury to another person.

(3) For purposes of this section, a law enforcement officer includes an alcoholic beverage enforcement officer and a conversation officer of the department of natural resources.

[*IC 35-44-3-3, as added by acts 1976, P.L. 148, Sc. 4; 1977, P.L. 340, Sc. 61; 1979, P.L. 83, Sc. 11; P.L. 188-1984, Sc. 1; P.L. 325-1987, Sc. 1.*]

STATE OF INDIANA) IN THE ALLEN CIRCUIT COURT
) SS:
COUNTY OF ALLEN) 1989 TERM CC-83-46

PETITION FOR SPECIAL PROSECUTOR

COMES NOW Stephen M. Sims, Prosecuting Attorney for the 38th Judicial Circuit, Indiana, and files this Petition requesting the appointment of a Special Prosecutor in the following words and figures:

1. That Lieu B. Hoang, is a defendant in the Allen Superior Court Cause No. 02D04-8709-CF-474 and that the Prosecuting Attorney deemed it necessary to petition for a Special Prosecutor in that cause, said cause involving Deputy Prosecuting Attorney Karen K. Richards, as a victim or witness; that the court agreed with said petition and appointed Special Prosecutor Daniel J. Sigler, Prosecuting Attorney of the 26th Judicial Circuit, as Special Prosecutor;

2. That in the late evening hours of Friday, April 28, 1989 or the early morning hours of Saturday, April 29, 1989, your petitioner has been informed that the same defendant, Lieu B. Hoang, was arrested at the residence of Deputy Prosecuting Attorney for the 38th Judicial Circuit, Karen E. Richards; and defendant allegedly was on the second floor porch attempting to break into her residence;

3. That Karen E. Richards is employed as a part-time deputy prosecuting attorney and has been for several years;

4. That if the prosecutor were [sic] to proceed further in this matter, it might give the appearance of impropriety.

WHEREFORE, the State of Indiana respectfully requests the Court to appoint a special prosecutor in this matter and for all other relief deemed proper in the premises.

/s/ Stephen M. Sims

FILE CLERK'S OFFICE
CONNIE CAMPBELL, CLERK
1989 MAY - 1 PM 4:33
ALLEN CIRCUIT COURT

STEPHEN M. SIMS
Prosecuting Attorney
38th Judicial Circuit
State of Indiana
Attorney # 344-02

Considered and granted at 4:35 p.m. 5-1-89
Thomas L. Ryan

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN CIRCUIT COURT

1989 TERM

STATE OF INDIANA)
)
VS)
)
LIEU B. HOANG)

IN THE
MATTER OF APPOINTMENT
OF A SPECIAL PROSECUTOR

O A T H

I, Daniel J. Sigler/Adams County Prosecutor's Office, Special Prosecutor of Allen County, Indiana, hereby swear or affirm that I will faithfully discharge my duties and responsibilities as Special Prosecutor in each of the matters to which I have been appointed by the Order of the Allen Circuit Court dated May 1, 1989.

Dated this 2nd day of May, 1989.

/s/ Daniel J. Sigler

DANIEL J. SIGLER
Adams County Prosecutor's Office
Special Prosecutor
Allen County

I swear or affirm, under penalties of perjury, that the foregoing representations are true and correct.

/s/ Daniel J. Sigler

DANIEL J. SIGLER
Adams County Prosecutor's Office

FILE CLERK'S OFFICE
CONNIE CAMPBELL, CLERK
1989 MAY - 2 AM 10:03
ALLEN CIRCUIT COURT

Allen Circuit Court

Civil Docket

Cc -83-46

	Attorneys for Plaintiff	IN THE MATTER OF APPOINTMENT OF SPECIAL PROSECUTOR	Filed
	STEPHEN M. SIMS		
		VS.	Action Petition for
	Attorneys for Defendant		Special Prosecutor

9-11-89	Daniel J. Sigler is appointed Special Prosecutor. Dainel J. Sigler files oath and acceptance. 297-324
5-1-89	State of Indiana, by Stephen M. Sims, Prosecuting attorney, files Petition for Special Prosecutor, which is considered and granted purs
	Memorandum order of this Court therefor
5-2-89	~~Memorandum order filed and approved.~~ (E.F.) 307/285-289
5-1-89	~~Stephen M. Sims, Prosecuting Attorney, files Petition for Special Prosecutor; RE: Lieu B. Hoang. Considered and granted at 4:35 p.m.~~
5-2-89	Comes now Daniel J. Sigler, Adams County Prosecutor's Office, and files his oath. (RE: Lieu B. Hoang) 307/290
5-23-89	Comes now Stephen Goldsmith/Marion County Prosecutor's Office, and files his oath. (RE: 02C01-8809-CP-815; State of Indiana Vs. Lot Num

5-1-89 Stephen M. Sims, Prosecuting Attorney, files Petition for Special Prosecutor; RE: Lieu B. Hoang. Considered and granted at 4:35 p.m.

5-2-89 Comes now Daniel J. Sigler, Adams County Prosecutor's Office, and files his oath. (RE: Lieu B. Hoang)

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE NO. 02D04 - 8905 - CF - 431

STATE OF INDIANA

VS.

LIEU B. HOANG

INFORMATION FOR:

COUNT I
ATTEMPTED BURGLARY
A Class B Felony

COUNT II
ATTEMPTED BURGLARY
A Class B Felony

COUNT III
RESISTING LAW ENFORCEMEMT
A Class D Felony

Count I

Richard Stoner, being duly sworn upon his oath, says that:

On or about the 28th day of April, 1989, in Allen County, State of Indiana, Lieu B. Hoang did attempt to commit the crime of Burglary by knowingly and intentionally go about the premises of Karen E. Richards located at 2421 Florida Drive, Fort Wayne, Allen County, Indiana, insert a wire into a door attempting to gain entry, with intent to commit a felony, to-wit: Confinement, which conduct constituted a substantial step towards the commission of the crime of Burglary, all of which is contrary to the form of the statute in such cases made and provided, to-wit: Indiana Code 35-43-2-1, and against the peace and dignity of the State of Indiana.

Count II

Richard Stoner, being duly sworn upon his oath, says that:

On or about the 28th day of April, 1989, in Allen County, State of Indiana, Lieu B. Hoang did attempt to commit the crime of Burglary by knowingly and intentionally go about the premises of Karen E. Richards located at 2421 Florida Drive, Fort Wayne, Allen County, Indiana, insert a wire into a door attempting to gain entry, with intent to commit a felony, to-wit: Rape, which conduct constituted a substantial step towards the commission of the crime of burglary, all of which is contrary to the form of the statute in such cases made and provided, to-wit: Indiana Code 35-43-2-1, and against the peace and dignity of the State of Indiana.

Count III

Richard Stoner, being duly sworn upon his oath, says that:

On or about the 28th day of April, 1989, in Allen County, State of Indiana, Lieu B. Hoang did knowingly and intentionally and forcibly resist Officers Tom Taylor, M. Scheele and E. Hinsey, while said officers were lawfully engaged in their duties as law enforcement officers and in the course of said forcible resistance then inflicted bodily injury on them, all of which is contrary to the form of the statutes in such cases made and provided, to-wit: Indiana Code 35-44-3-3 (b)(1), and against the peace and dignity of the State of Indiana.

/s/ Richard Stoner

Richard Stoner

Subscribed and sworn to before me, a Notary Public, this 4th day of May, 1989.

/s/ Marcia E. Heuer

Notary Public

My Commission Expires:

4-29-91

Resident of Whitley County, Indiana

APPROVED BY ME: */s/ Daniel J. Sigler*

Daniel J. Sigler
Prosecuting Attorney
26th Judicial Circuit

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE NO. 02D04 - 8905 - CF - 431

STATE OF INDIANA

VS.

LIEU B. HOANG

AFFIDAVIT OF PROBABLE CAUSE

COUNT I
ATTEMPTED BURGLARY
A Class B Felony

COUNT II
ATTEMPTED BURGLARY
A Class B Felony

COUNT III
RESISTING LAW ENFORCEMENT
A Class D Felony

The undersigned, being first duly sworn upon his oath, says that:

(1) He is a detective with the City of Fort Wayne Police Department, had an occasion to investigate the matters herein set forth and has good cause to believe that the Defendant committed the offenses as alleged in the information.

(2) That on May 1, 1989, he was assigned to investigate the attempted burglary of the Karen A. Richards residence located at 2421 Florida Drive, Fort Wayne, Allen County, Indiana, which occurred on April 28, 1989.

(3) The investigating officers reported on said date a report of a prowler at 2421 Florida Drive was placed at the Fort Wayne Police Department and patrol officers were thereupon dispatch to the scene.

(4) In responding to the call, the officers discoverd a very short Vietnamese male pressed up against the house upon the roof of the sun porch on the second story just to the north of a doorway.

(5) At said time and place, Officer Taylor of the Fort Wayne Police Department advised the male that he was under arrest for Criminal Trespass, grabbed his right wrist and advised him to place his hands behind his back. The male pulled away tugging the officer on to the roof with him and began struggling with him on the roof top. Two other officers were required to subdue the subject causing them pain and minor injuries.

(6) Upon taking the subject in the [sic] custody, the officers learned his identity to be Lieu B. Hoang of 1682 Hobson Road, Fort Wayne,

Indiana. Hoang is familiar to the undersigned in that the victim has had an ongoing problem of harassment from him for the past several years. Currently pending in the Allen Circuit Court, Judge David S. Hanselman, Wells County, Special Judge, is a two count felony intimidation charge which involved the victim's former boyfriend and the victim.

(7) The terms of the Defendant's bond for the above offense require that he remain at least a quarter mile from the premises of the victim. In fact, in the last several weeks, his vehicle has been seen in front of the victim's residence or near the same on several occasions and there has been other suspicious and harassing activity on the part of Lieu B. Hoang.

(8) Upon his arrest, Mr. Hoang insisted that he be allowed to see and speak to Karen Richards immediately. When told she did not want to see him, the Defendant stated "you don't know, Karen loves me, I want to talk to her now!"

(9) In investigating the scene, the officer discovered a piece of wire which had been inserted in the door and was hanging from the inside handle where it appeared to have been used for an attempted entry to the residence. There were also scratch marks on the door made by the wire and a pair of boots found on the porch. At the time the Defendant was taken into custody, he was in stocking feet.

(10) The victim in the case states the Defendant has followed her in the past on numerous occasions, knows her habits and knew she would be returning home late that evening. She believes that the Defendant was attempting to lie and wait for her at which time he would force his affections on her and confine her to her premises until she complied with his wishes.

WHEREFORE, the undersigned, upon hearing held the Court issue a warrant forthwith for the arrest of the Defendant herein. [sic]

/s/ Richard Stoner, FWPD 1288

Richard Stoner

Subscribed and sworn to before me, a Notary Public, this 4th day of May, 1989.

/s/ Marcia E. Heuer

Notary Public

My Commission Expires:
4-29-91.
Residence of Whitley County, Indiana

AFFIDAVIT FOR PROBABLE CAUSE

(Attempted Burglary)

1. The undersigned swears and affirms, under the penalties for perjury, that he has good cause to believe that on or about the 28th day of April, 1989, at the County of Allen and in the State of Indiana, said defendant, Lieu Ba Hoang, did knowingly commit the crime of Attempted Burglary [IC] 35-43-2-1

2. The defendant, Lieu Ba Hoang, is described as being male Vietnamese, D.O.B.: 4-14-50, SS # 586-36-9420.

3. The Affiant, Off. T. Taylor, is an officer of the Fort Wayne Police Department. The Affiant believes and has good cause to believe that the said defendant committed the aforesaid offense. The Affiant bases his belief on the fact that on April 28, 1989 I responded to a call at 2421 Florida Ave. The call was of a person on the 2nd floor porch attempting entry. Upon arrival I found the Defendant hiding up against the house on the 2nd floor porch. A piece of wire was hooked on the inside screen door handle where it had been slid through the door in an attempt to open the door. There were also scratches on door edge were [sic] the wire had been worked through. The C/P Karen Richards had observed the Defendant hiding on the back porch.

(Resisting Law Enforcement)

. . . . . .

3. . . . Upon attempting to handcuff the subject after placing him under arrest, I grabbed the Defendant's wrist at which time he pulled me down to the roof. I repeatedly took the Defendant to put his hands behind his back and was only able to handcuff him after the arrival of other officers.

/s/ Thomas Taylor, FW 1285
Affiant

STATE OF INDIANA)
COUNTY OF ALLEN) SS:

Subscribed and sworn to before me in and for said County and State this 29th day of April, 1989.

/s/ Michael G. Nancarrow
Notary Public

My Term/Commission Expires:
October 23, 1992

STATE OF INDIANA)
) SS
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE NO. 02D04-8905-CF-341

STATE OF INDIANA)
)
VS.)
LIEU B. HOANG)

ENTRY

THE FOLLOWING ENTRY WAS MADE BY THE COURT ON THE 26th DAY OF July, 19 89 :

"Parties having failed to strike, the Clerk now strikes Judge Petersen and Judge Heffelfinger from the panel. Judge Tubergen remains, subject to his qualification and acceptance."

DATED: July 26, 1989

cc: Judge Dane L. Tubergen, Steuben Co.
Daniel J. Sigler, Special Prosecutor
Lieu B. Hoang, Defendant
Court's copy

Connie L. Campbell, CLK
~~JUDGE~~ Clerk Allen Circuit and Superior Courts

(FALSE) ENTRY

THE FOLLOWING ENTRY WAS MADE BY THE COURT ON THE 26th DAY OF JULY, 1989:

"Parties having failed to strike, the Clerk now strikes Judge Petersen and Judge Heffelfinger from the panel. Judge Tubergen remains, subject to his qualification and acceptance."

(Forged Signature of)

Connie L. Campbell, Clerk

Clerk, Allen Circuit and Superior Courts

DATED: July 26, 1989

cc: Judge Dane L. Tubergen, Steuben Co.
Daniel J. Sigler, Special Prosecutor
Lieu B. Hoang, Defendant
Court's copy

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE NO. 02D04-8905-CF-341

State of Indiana

Vs.

Lieu B. Hoang

NOTICE

Comes now Connie L. Campbell, Clerk of the Allen Superior Court and notifies all parties of record that on September 28, 1989 Lieu B. Hoang filed a Praecipe pursuant to Indiana Rules of Trial Procedure 53.1.

You are hereby notified that after examining the records in this cause, the Clerk finds that the court has failed to set the following motions for hearing or failed to rule on the motions within the 30 day limitation pursuant to Indiana Rules of Trial Procedure 53.1: (1) May 9, 1989, Motion for Discovery, (2) June 23, 1989, Motion for the Return of Defendant's Property (3) June 23, 1989, Motion to Adjust Bond Conditions.

You are also notified that submission of this cause is withdrawn effective September 28, 1989, the time of the filing of the praecipe. Further, this cause is transferred to the Supreme Court for appointment of a special judge.

Connie L. Campbell, Clerk
Allen Superior Court

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 1989, I have deposited a copy of the foregoing in the U.S. mail, postage prepaid, properly addressed to the Honorable Dane L. Tubergen, Daniel J. Sigler, Special Prosecutor and Lieu B. Hoang.

Case file

Connie L. Campbell, Clerk
Clerk, Allen Superior Court

You are also notified that submission of this cause is withdrawn effective September 28, 1989, the time of the filing of the praecipe. Further, this cause is transferred to the (Indiana) Supreme Court for appointment of a special judge.

Case file

/s/ Connie L. Campbell, Clerk

Connie L. Campbell, Clerk
Allen Superior Court

THE JULY 27, 1989 TELEPHONE CONVERSATION OF CONNIE L. CAMPBELL AND LIEU B. HOANG

OPERATOR: Good afternoon. Clerk's office.

HOANG: Yes, would you transfer me to Connie Campbell, please?

OPERATOR: Okay. One moment?

. . . . . .

CAMPBELL: Clerk's office.

HOANG: Yes. Could I speak to Connie Campbell, please?

CAMPBELL: This is she.

HOANG: Oh Connie, this is Lieu Hoang, remember me?.

CAMPBELL: Uh-huh.

HOANG: I received a letter from the Clerk's office today about your selecting judge Tubergen of Steuben county for m ---

CAMPBELL: Hey, the Clerk of the Supreme Court. Not me. Was it --- Did it come from the Supreme Court?.

HOANG: No.

CAMPBELL: It came from me?.

HOANG: It's come from Connie Campbell.

CAMPBELL: Did some body strike it or some thing?.

HOANG: Now listen to me reading the entry, okay? Ah... *"The following entry was made by the court on the 26th day of July, 1989. Parties having failed to strike, the Clerk now strikes Judge Petersen and Judge Heffelfinger from the panel. Judge Tubergen remains, subject to his qualification and acceptance."* Then signed: *"Connie Campbell, Clerk, Allen Circuit and Superior Courts."* Was that you?

CAMPBELL: No.

HOANG: Okay. Okay.

CAMPBELL: I don't know.

HOANG: Did you authorize anyone to select Tubergen? Anyone including your secretary?

CAMPBELL: I didn't. Ah... you know, we didn't.

HOANG: So that --- that they made ---

CAMPBELL: What --- What is the cause number, Lieu? And let me check.

HOANG: CF-341.

CAMPBELL: Okay. This --- What year is it?.

HOANG: May 89.

CAMPBELL: 89. Is this State of Indiana versus you?

HOANG: Yes. And ---

CAMPBELL: Let me pull the packet and let me take a look at it and then I have to call you back, okay?

HOANG: Okay.

CAMPBELL: 'cause I didn't do it.

HOANG: Okay, but ---

CAMPBELL: So what number can I reach you at?

HOANG: 422-1631

CAMPBELL: 422-1631

HOANG: Okay. In case you're not aware, the reason they want him to be a judge in my case is because they want him to put me in jail.

CAMPBELL: Uh-huh.

HOANG: So check that, okay?

CAMPBELL: Okay.

HOANG: He cannot be a judge in this case.

CAMPBELL: Let me check it and see what I can come up with, okay?

HOANG: Okay. Thank you.

CAMPBELL: All right.

HOANG: Bye-bye.

CAMPBELL: Good bye. (END OF RECORDING)

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE No. 02D04 - 8905 - CF - 341

STATE OF INDIANA)
)
vs.) RECORD OF PROCEEDINGS
)
LIEU B. HOANG)

Relevant Excerpts from the Transcript of
THE SEPTEMBER 12, 1990 PRE-TRIAL CONFERENCE

Present: Daniel J. Sigler, Dane L. Tubergen, Michael K. Sutherlin and Lieu B. Hoang. Court Reporter: Erlene J. Covault.

. . . . . .

TUBERGEN: ... Mr. Sigler, we have talked about this before and I just wonder if there is any information of any kind that you have that has not been provided to the defendant to this point?

SIGLER: He has not been able to view, because of the circumstances, he has not been able to view the photographs. I mean, we have completely made discovery. They have a witness list. I've got it with a file stamp right here. I just checked to make sure that I did provide that. I provided that back in January. We listed evidence to be used and photographs of a crime scene taken by Officer Ramos, photographs of Karen Richards' residence, those were taken by Karen herself, and then photographs from the defendant's camera. While I don't have any of those items --- either Karen or the police do.

(Original Transcript: P. 7, L. 11 to P. 8, L. 10)

(The following excerpt showed one of the reasons they did not want Hoang to present his case to the jury by himself but by attorney like Sutherlin or Wagoner)

TUBERGEN: Mr. Sutherlin, What witnesses will you introduce and what will be the substance of their testimony?

SUTHERLIN: Your Honor, we would probably rely primarily upon the cross-examination of the witnesses, and Mr. Lieu Hoang would testify in his own defense.

TUBERGEN: There was some question of expert witnesses, I believe, audio expert and maybe photographic expert. Will there be any such witnesses?

SUTHERLIN: Your Honor, could I have just a minute, please?

TUBERGEN: Sure.

(Hoang asked Sutherlin what he tried to do by planning to call no witnesses including forensic expert witnesses and to present no evidence including photographs and tapes. Sutherlin's answer was: "Why should they give you a trial if you don't give them a chance to win")

SUTHERLIN: Your Honor, I can't, at this point, tell you whether or not we will call any expert witnesses...
(Original Transcript: P. 12, L. 15 to P. 13, L. 15)

(Sigler then pleaded with Sutherlin for a settlement by resolving both 1987 [02D04-8709-CF-474] *and 1989* [02D04-89 05-CF-341] *cases "short of trial" which was immediately rejected by Hoang as follow)*

TUBERGEN: ... Would you report, Mr. Sigler, on the status of the other case that Judge Forcum is handling?

SIGLER: Well, the status is, Your Honor, that it also is set for pretrial. Although, I think, the likelihood of that ever going to trial, given the amount of time the defendant has been incarcerated, and given the respective punishments that are applicable to the potential sentences in those cases, I just don't think it probably will go to trial. I think if this case is resolved, that one will be resolved in someway, together with this one. I don't know if Mr. Sutherlin agrees with that, but it seems to me ---

HOANG: I don't agree with that.
(Original Transcript: P. 16, L. 5 to P. 17, L. 2)

(So Tubergen threatened to stop the jury trial again with their false "competency proceedings" as follow)

TUBERGEN: I guess next I'm concerned about the defendant's

mental condition. He once has been determined incompetent to stand trial. Certainly his demeanor would suggest an instability or a lack of comprehension, at least, as to procedure and proper decorum. He has once been determined to be incompetent to stand trial. I guess I have to be on my guard about that. If it would appear to me that the defendant should become incompetent to stand trial or appear to me that he is incompetent to stand trial, I would have to very quickly order his examination again and conduct a hearing along those lines. That is particularly so because he has once been examined and found incompetent to stand trial.

SIGLER: I would point out to the court that Judge Forcum indicated to the defendant back when he released him on bond that one of the conditions was that he not file --- make filings on his own --- because Judge Forcum indicated that that was a direct indication to him of problems with his mental health again. I don't intend to assert that at this point, but he has made a filing today. That is of some concern.

HOANG: Objection. That is in a different case.

TUBERGEN: Mr. Hoang, be quiet.

HOANG: That's why you wanted me to have a lawyer.

TUBERGEN: Be quiet. This is exactly what I'm talking about. Once you are told by the judge to be quiet and you continue to disrupt the proceedings, that says to me that you don't have the comprehension to sufficiently understand what is going on. Again, so we understand what my position is on pro se filings, I won't accept them. He can file them, but I won't rule on them. I will only rule on motions and pleadings filed by counsel, as long as he remains represented. I also would have to indicate that if the defendant seeks to proceed without counsel and pro se, I would have to then question his competency at that point, also.

(Original Transcript: P.17, L. 3 to P. 19, L. 15)

(Tubergen then not only did not allow Hoang to make anymore objection to their proposed settlement of resolving these cases without

jury trials but also commanded Sutherlin to stay there with them to draft their latest proposed settlement agreement this way)

HOANG: May I say something?

TUBERGEN: No.

HOANG: Oh.

TUBERGEN: All right, do either counsel have questions of the court then?

SIGLER: I think it should be stated on the record that if the question ever arises, we are making sincere efforts to resolve this case short of trial, and we continue to do that, judge. I would like to think that we will be successful. There is no guarantee of that, but we are working on it.

TUBERGEN: I would urge both counsel to spend some time today if you would since you (Sutherlin) had to come all the way from Indianapolis, and discuss the matter. *(Original Transcript: P. 19, L. 16 to P. 20, L. 12)*

(Then they all stayed there and drafted their latest proposed settlement agreement which is the next Appendix, See A. 61)

* * * * *

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT
CAUSE No. 02 D 04 - 8905 - CF - 341
CAUSE No. 02 D 04 - 8709 - CF - 474

STATE OF INDIANA)
)
v.)
)
LIEU B. HOANG)

AGREEMENT TO RESOLVE PENDING CRIMINAL CHARGES

The State of Indiana, by and through a special prosecutor, Mr. Daniel J. Sigler, and the defendant, Lieu B. Hoang, by his attorney Michael K. Sutherlin, have entered into negotiations regarding the above-referenced pending criminal matters. The agreement is set forth as follows, to be approved by the Court:

1. That the defendant Lieu B. Hoang admits no liability and this agreement is not to be construed in any way as an admission of liability or wrong-doing in any of the criminal matters under the above-captioned causes of action.

2. The trial set in the above matters will be continued for two (2) years, unless there is a violation of the agreement.*

3. That Mr. Lieu B. Hoang agrees to reside outside of this state for a period of two (2) years and to keep his attorney, Michael K. Sutherlin, informed of his whereabouts and location.*

4. That Mr. Hoang shall have thirty (30) days after the approval of this agreement by the Court to remove himself from the state.

5. That during the pendency of these matters Mr. Hoang has had no contact with the complaining witness.

6. That the parties agree that Mr. Hoang will not assert any right because of the delay in the trial, and will waive his right to any speedy trial.*

7. That the state may enforce this agreement by the terms and conditions placed upon Mr. Hoang by the surety bond which the Court set in this matter.

* [*Emphasis added*]

8. Mr. Hoang agrees not to initiate any civil action and releases the State of Indiana and any complaining parties from any liability which may have been created out of facts and circumstances arising out of the initiation of these criminal charges.

9. Mr. Hoang will receive all of his property back at the end of two (2) years.

10. That all record of any criminal charges under the above cause numbers shall be expunged, and that the Allen County Sheriff shall certify to the Court that they have made their best effort to expunge all effort referencing these criminal charges.

11. That Mr. Hoang will initiate proceedings to expunge any records created during and as a result of his detention for purposes of assessing his competency to stand trial. The state, through the office of the prosecutor, agrees not to resist any action initiated by Mr. Hoang, but does not have the power to act in this area.

(Refused to sign)

_____
Lieu B. Hoang

_____
Daniel J. Sigler,
Special Prosecutor

_____
Michael K. Sutherlin

APPROVED this_____day of_____, 1990.

_____
John W. Forcum, Special Judge

_____
Dane L. Tubergen, Special Judge

Lien —

Here are your copies of recent pleadings:

① Motion for discovery;

② Notice of Corn's deposition.

Also, I briefly talked with Tom Bell earlier this week. He said the prosecutor told him to lie! Give me a call; we need to talk. Judy said she knew Doerfler, and they needed your conviction. Now she wants me to forget whatever she said.

Denny.

As the Court Reporter, I hereby certify that this is a true and complete Xerox Copy of the Exhibit GG which original is being held in the custody of the Court Reporter, being eleven lines.

Erlene J. Covault

Erlene J. Covault, Court Reporter

Date: 2-27-89

DEFENDANT'S EXHIBIT GG CF 87-474

WYNEKEN & KERN
ATTORNEYS
3010 FORT WAYNE NATIONAL BANK BUILDING
FORT WAYNE, INDIANA 46802

WARREN W. WYNEKEN
WILLIAM ALFRED KHUN
DENNIS R. OBERLIMAN

(219) 426-8078

DEFENDANT'S EXHIBIT
JJ
C.F. #2474

Lucy —

Hear are your copies of recent pleadings

(1) Pltf's answers to Interrogatories;
(2) Notice of your deposition;
(3) Pltf's Motion to Compel Ans to Interrogatories

Also, I briefly talked with Dirk Baltes earlier this week to set up a meeting. He refused! Give me a call; we need to talk.

As a court reporter, I hereby certify that this is a true and complete copy of Exhibit JJ which is the carbon copy with the misspelled word of "HEAR" and all bottom lines are too close together, being eleven lines.

Erlene J. Covault
Erlene J. Covault, Official Court Reporter

Dated: 2-27-89

The original Exhibit JJ is being retained in the custody of the Court Reporter. EJC.

Q: Was he a white man or a black man?

A: White. He was getting thin hair too, receding.

Q: Did he have anything else that you might recall? Mustache, glasses?

A: Uh huh. (Indicating negative)

Q: What did you observe about this guy? What focused your attention on him?

A: We thought it was really funny because he was also carrying one of these Gobot boxes and we saw him take the one out and put his in and walk away with this one and I thought maybe he got one with a little rip in it and he seen this guys cart sitting there and you know like having a cabbage patch doll and switching them.

Q: Sure. So now, explain to me, you say you saw him take it out and put it in, what is it that you are referring to taking out and putting in, in what?

A: Well, he was carrying, like I said, a big Gobot box...

Q: Was that the same type of box that Mr. Hoang had in his cart?

A: As far as looking at it from a distance, it appeared to be.

Q: Then what did you see this other gentleman do who was wearing the blue windbreaker?

A: I seen him take the box that he was carrying and stick it in his cart and then take the one he had and take it out. But the whole time he was doing it, he looked like he was, looking around. You know how people are when they're nervous when they're shoplifting or something, that's basically what he was doing and it really caught our attention, it was really strange.

Q: And Kathy this is what you saw as well? Did you see this gentlemen?

A: Oh yea.

Q: Why don't you describe to me what you saw?

A: Well, basically the same thing. He was taking Mr. Hoang's box out and putting his in, you know, exchanging boxes.

Q: O.K. Did you see where he went to after he exchanged boxes?

A: No. We just basically wanted to get out of there and get the kids home. It was about 9:00 - 9:15.

Q: Was he a white man or a black man?

A: Black. He was getting thin hair too, receding.

Q: Did he have anything else that you might recall? Mustache, glasses?

A: Uh huh.

Q: What did you observe about this guy? What focused your attention on him?

A: We thought it was really funny because he was also carrying one of these Gobot boxes and we saw him take the one out and put his in and walk away with this one and I thought maybe he got one with a little rip in it and he seen this guys cart sitting there and you know like having a cabbage patch doll and switching them.

Q: Sure. So now, explain to me, you say you saw him take it out and put it in, what is it that you are referring to taking out and putting in, in what?

A: Well, he was carrying, like I said, a big Gobot box...

Q: Was that the same type of box that Mr. Hoang had in his cart?

A: As far as looking at it from a distance, it appeared to be.

Q: Then what did you see this other gentleman do who was wearing the blue windbreaker?

A: I seen him take the box that he was carrying and stick it in his cart and then take the one he had and take it out. But the whole time he was doing it, he looked like he was, looking around. You know how people are when they're nervous when they're shoplifting or something, that's basically what he was doing and it really caught our attention, it was really strange.

Q: And Kathy this is what you saw as well? Did you see this gentlemen?

A: Oh yea.

Q: Why don't you describe to me what you saw?

A: Well, basically the same thing. He was taking Mr. Hoang's box out and putting his in, you know, exchanging boxes.

Q: O.K. Did you see where he went to after he exchanged boxes?

A: No. We just basically wanted to get out of there and get the kids home. It was about 9:00 - 9:15.

LIEU,

JUDGE FORCUM WILL ISSUR A WHRRANT FOR YOUR ARREST ON JAN 1, 1991 IF THE MATTER IS NOT SETTLED.

HE HAS TAKEN MY MOTION TO WITHDRAW UNDER ADVISEMENT UNTIL THEN

I WILL BE IN ROM 314 UNTIL 10:45 AM BEFORE I RETURN TO INDPLS. 428-7566

MICHAEL K SUTHERLIN

Lieu,

Judge Forcum will issue a warrant for your arrest on Jan 1, 1991 if the matter is not settled.

He has taken my motion to withdraw under advisement until then.

I will be in rom [sic] 314 until 10:45 AM before I return to Indpls. 428-7566

Michael K. Sutherlin

THE DECEMBER 17, 1990 TELEPHONE CONVERSATION OF JANE ANN DRILL AND LIEU B. HOANG

DRILL: Steuben Circuit Court. Jane's speaking.

HOANG: Hello Jane. This is Lieu Hoang. Will you transfer me to Judge Tubergen, please?

DRILL: Let me see if he is available. Hold on?

. . . . . .

Mr. Hoang?

HOANG: Yes.

DRILL: He isn't available, but he has a message for you.

HOANG: A message? What --- What did he say?

DRILL: He said that... Let's see... *(Chuckling and Mumbling)*

HOANG: I'm sorry. What ---

DRILL: The note is upside down. I'm... *(Chuckling)* ah... He's going to issue a warrant for your arrest and order you committed to a mental institution if you don't sign an agreement with Special Prosecutor Sigler.

HOANG: He's going to... He can't do that!

DRILL: Oh yes he can. He's the judge.

HOANG: Never mind. Ah... Will you send me that note, please?

DRILL: Ah... *(Mumbling)*... written down his message. It isn't a formal ---

HOANG: Okay. Okay. Thanks anyway. So I better sign it immediately.

DRILL: All right, I'll tell him that.

HOANG: Good bye.

DRILL: Bye-bye.

(END OF RECORDING)

91H508 36

State of Indiana, Allen County, ss:

STATE OF INDIANA

VS.

LIEU B. HOANG
1682 Hobson Road
Fort Wayne, IN

M/Oriental
DOB: 4/14/50

BENCH WARRANT

IN THE ALLEN SUPERIOR COURT

State of Indiana, to the Sheriff of Allen County, Greeting:

You are commanded to arrest LIEU B. HOANG

if he may be found in your county, so that you have him before the Judge of the Allen Superior Court instanter, then and there to answer the State of Indiana on a charge of CONTEMPT OF COURT/FAILURE TO APPEAR

and abide the order of the Court thereupon, and return this writ. BOND $ $50,000.00**

**ONLY COMMERCIAL SURETY BAIL WILL BE ACCEPTED BY THE COURT.

WITNESS, the Clerk and Seal of Said Court, this 24th day of January *A. D., 19* 91

Connie K. Campbell
CLERK

RECEIVED
SHERIFF'S DEPT.
ALLEN COUNTY, IN.
JAN 24 2 46 PM '91

DAVID L. FRIGEL
SHERIFF

You are commanded to arrest LIEU B. HOANG if he may be found in your county, so that you have him before the Judge of the Allen Superior Court instanter, then and there to answer the State of Indiana on a charge of CONTEMPT OF COURT/FAILURE TO APPEAR and abide the order of the Court thereupon, and return this writ.
BOND $50,000.00** ONLY COMMERCIAL SURETY BAIL WILL BE ACCEPTED BY THE COURT.

WITNESS, the Clerk and Seal of said Court, this 24th day of January A.D., 1991

Connie L. Campbell (Rubber Stamped)
Clerk

91H509 36

State of Indiana, Allen County, ss:

STATE OF INDIANA

VS.

LIEU B. HOANG
1682 Hobson Road
Fort Wayne, IN

M/Oriental
DOB: 4/14/50

BENCH WARRANT

IN THE ALLEN SUPERIOR COURT

State of Indiana, to the Sheriff of Allen County, Greeting:

You are commanded to arrest LIEU B. HOANG *if he may be found in your county, so that you have him before the Judge of the Allen Superior Court instanter, then and there to answer the State of Indiana on a charge of* CONTEMPT OF COURT *and abide the order of the Court thereupon, and return this writ.* BOND $ NO BOND

WITNESS, the Clerk and Seal of Said Court, this 24th *day of* January *A. D., 19* 91

Connie L. Campbell
CLERK

DANIEL L. IGEL
SHERIFF

RECEIVED
SHERIFF'S DEPT.
ALLEN COUNTY, IN.
JAN 24 2 46 PM '91

You are commanded to arrest LIEU B. HOANG if he may be found in your county, so that you have him before the Judge of the Allen Superior Court instanter, then and there to answer the State of Indiana on a charge of CONTEMPT OF COURT and abide the order of the Court thereupon, and return this writ. BOND $ NO BOND

WITNESS, the Clerk and Seal of said Court, this 24th day of January A.D., 1991

Connie L. Campbell (Rubber Stamped)
Clerk

STATE OF INDIANA) IN THE ALLEN SUPERIOR COURT
) SS:
COUNTY OF ALLEN) CAUSE No. 02 D 04 - 8905 - CF - 341

STATE OF INDIANA

VS. **ENTRY**

LIEU B. HOANG

THE FOLLOWING ENTRY WAS MADE BY THE COURT ON THE 30TH DAY OF JANUARY, 1991:

The Court, having been made aware of the recent conduct of defendant and having personal knowledge of defendant's in-court conduct and having further been made aware of a determination of lack of comprehension to start [sic] trial in related proceedings, finds reasonable grounds to believe that the defendant lacks the ability to understand the proceedings and assist in his defense.

IT IS ORDERED THAT:

1. A hearing to determine whether defendant lacks the ability to understand the proceedings and assist in the preparation of his defense will be held on March 14, 1991, at 9:00 A.M.

2. Ludwig G. Heineman, M.D. and Jay D. Fawver, M.D., both psychiatrists, are appointed to examine the defendant, file report and testify as to whether defendant can understand the proceedings and assist in the preparation of his defense.

DATED: Jan. 30, 1991

/s/ Dane L. Tubergen

Dane L. Tubergen, Special Judge

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CAUSE No. 02 D 04 - 8905 - CF - 341

STATE OF INDIANA

VS.

LIEU B. HOANG

ENTRY

THE FOLLOWING ENTRY WAS MADE BY THE COURT ON THE 5TH DAY OF FEBRUARY, 1991:

Defendant files pleading styled as Verified Petition for Writ of Habeas Corpus, however, said pleading appears to request immediate relief of discharge and the Court considers the same to be Motion for Discharge.

The Court finds that the factual allegations set forth in the motion do not accurately reflect the record in this cause. Defendant's motion for discharge is denied.

DATED: Feb. 5, 1991

/s/ Dane L. Tubergen

Dane L. Tubergen, Special Judge

CIRCUIT AND SUPERIOR COURTS
38TH JUDICIAL DISTRICT
ALLEN COUNTY - INDIANA

STATE OF INDIANA	)	
	)	
vs.	)	CAUSE NO. 02D04-8709-CF-474
	)	
LIEU B. HOANG	)	

ORDER OR JUDGMENT OF THE COURT

Comes now the Court and denied Defendant's Motion for Habeas Corpus as it is not in proper form and does not accurately reflect the record in this cause. The Court sets a hearing on Defendant's Motion to Set Bond on March 14, 1991 at 10:00 A.M. At said hearing the Court will review the issue of the Defendant's competency to stand trial.

DATED: Feb. 15, 1991

/s/ John W. Forcum
SPECIAL JUDGE

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG,	)	
	)	
Petitioner,	)	
	)	
-vs-	)	CAUSE NUMBER F 91-00043
	)	
STEPHEN M. SIMS,	)	
DANIEL J. SIGLER,	)	
JOHN W. FORCUM,	)	
DANE L. TUBERGEN,	)	
JOSEPH SQUADRITO, and	)	
THE STATE OF INDIANA,	)	
	)	
Respondents.	)	

RETURN TO ORDER TO SHOW CAUSE, MOTION TO DISMISS AND MOTION TO VACATE ORDER TO FILE STATE COURT RECORD

Come now Respondents Stephen M. Sims, Daniel J. Sigler, John W. Forcum, Dane L.Tubergen, and the State of Indiana, by counsel, David A. Arthur, Deputy Attorney General, and for return to the Court's order to show cause show the Court that relief should be denied and this action dismissed for the reason that **Petitioner has failed to exhaust available state court remedies in that he has not yet been tried.***

And the Respondents further move the Court to vacate the order to file with this Court the complete state court record, for the same reason and for the further reason that because **there has been no trial there is no readily available state court record.***

Petitioner is hereby notified in the spirit of *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982), that 28 U.S.C. § 2248 provides that the allegations of a return to order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted by the Court as true, except to the extent that the Court finds from the evidence that they are

not true. The local Rules of this Court provide that you have fifteen (15) days from the date of service (the date on the certificate of service found at the end of the memorandum in support of this return) within which to file a response (plus three (3) days if this return and memorandum are served by mail). Failure to file a response within the time provided by these rules may subject this case to summary ruling by the Court; that is, the Court may decide this case without your response or traverse. Upon your written request, the Court may allow you more time to respond.

WHEREFORE, Respondents pray the Court deny the petition herein, dismiss this cause of action, and vacate the order to file the state court record of proceedings, and for all other necessary and proper relief in the premises.

Respectfully submitted,

LINLEY E. PEARSON
Attorney General of Indiana

* [*Emphasis added*]

By: */s/ David A. Arthur*
David A. Arthur
Deputy Attorney General

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing return, motion and motion has been duly served upon the party and the counsel for Respondent Squadrito listed below, by United States mail, first-class postage prepaid, on this 25th day of March, 1991:

Lieu B. Hoang
Allen County Jail
417 South Calhoun Street
Fort Wayne, IN 46802

John O. Feighner
HALLER & COLVIN
444 East Main Street
Fort Wayne, IN 46802

/s/ David A. Arthur
David A. Arthur
Deputy Attorney General

Office of Attorney General
219 State House
Indianapolis, IN 46204-2794
Telephone: (317) 232-6332
daa:1714E3

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LIEU B. HOANG,	)	
	)	
PETITIONER	)	
VS.	)	CAUSE NO. F 91-43
	)	
STEPHEN M. SIMS,	)	
DANIEL J. SIGLER,	)	
JOHN W. FORCUM,	)	
DANE L. TUBERGEN,	)	
JOSEPH SQUADRITO, and	)	
the STATE OF INDIANA,	)	
	)	
RESPONDENTS	)	

RETURN TO ORDER TO SHOW CAUSE, MOTION TO DISMISS, AND MOTION TO VACATE ORDER TO FILE STATE COURT RECORD

Comes now Respondent, Joseph M. Squadrito as Sheriff of Allen County, by John O. Feighner, Assistant Allen County Attorney, and for return to the court's order to show cause, shows the court that the relief requested by the Petitioner should be denied and this action dismissed for the reason that Petitioner has failed to exhaust available state court remedies, and that **he has not yet been tried.***

Respondent, Joseph M. Squadrito, further shows the court that he is the Sheriff of Allen County and, as such, has legal custody of Petitioner Lieu B. Hoang, Petitioner in this matter, but is not a party in the underlying proceeding now pending in the Allen Superior Court.

Respondent, due to his capacity of Sheriff of Allen County, joins in the Return to Order to Show Cause, Motion to Dismiss, and Motion to Vacate Order to File State Court Record previously filed in this cause by Respondent, Stephen M. Sims, Daniel J. Sigler, John W. Forcum, Dane L. Tubergen, and the State of Indiana, by counsel David A. Arthur, Deputy Attorney General.

WHEREFORE, Respondent, Joseph M. Squadrito, prays the court to deny the petition filed by Petitioner Lieu B. Hoang in this cause, and

requests that Respondent Joseph M. Squadrito be relieved from any obligation to file the state court record of proceedings in this matter for the reason that he is not a party thereto and **has no practicable way to obtain said Record of Proceedings and to file the same*** if such is required to be filed by the United States District Court, and to grant all other just and proper relief in the premises.

ALLEN COUNTY ATTORNEY

BY: */s/ John O. Feighner*

JOHN O. FEIGHNER, ASSISTANT
ALLEN COUNTY ATTORNEY
ATTORNEY FOR J. M. SQUADRITO
SHERIFF OF ALLEN COUNTY
444 EAST MAIN STREET
FORT WAYNE, INDIANA 46802
TELEPHONE: (219) 426-0444
I.D. # 6800-02

* [*Emphasis added*]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the above and foregoing has been sent this 28th day of March, 1991, to:

Lieu B. Hoang
1682 Hobson Road
Fort Wayne, Indiana 46805

Lieu B. Hoang
Allen County Jail
417 South Calhoun Street
Fort Wayne, Indiana 46802

Mr. David Arthur
Deputy Attorney General
219 State House
Indianapolis, Indiana 46204-2794

/s/ John O. Feighner
JOHN O. FEIGHNER

13377. jof/jb

STATE OF INDIANA)
) SS: IN THE ALLEN SUPERIOR COURT
COUNTY OF ALLEN)

STATE OF INDIANA)
)
VS.) CAUSE NO. 02D04-8709-CF-474
)
LIEU B. HOANG)

SECOND MOTION TO QUASH SUBPOENA DUCES TECUM

The undersigned nonparty, Leonard E. Eilbacher, moves that the Court quash the Subpoena Duces Tecum delivered to him and, in support of his Motion, shows the Court as follows:

1. A Subpoena Duces Tecum was served on him to appear in this cause on February 22, 1989, at 2:30 P.M., with a notation that, if not called on said date, he must show up the following day, all of which is more clearly shown by the Subpoena Duces Tecum which is attached hereto as Exhibit "A".

2. The undersigned had previously received a Subpoena Duces Tecum to appear herein on January 26, 1989, and filed his Motion to Quash Subpoena Duces Tecum, which Motion and Showings therein are incorporated here by reference, and attached hereto as Exhibit "B".

3. In addition to each and all of the grounds set forth in the original Motion to Quash, Exhibit "B", the undersigned further shows the Court that he has previously scheduled conflicts which would not permit him to appear in response to the Subpoena, as follows:

(a) He is scheduled to depart Fort Wayne for Indianapolis at about 3:00 P.M. on February 22, 1989, in order to attend a 6:00 P.M. meeting of the Indiana Continuing Legal Education Forum, which meeting is of the faculty of a live ICLEF seminar to commence the following day, February 23, 1989;

(b) He is scheduled to make a seminar presentation at 10:30 A.M. on February 23, 1989, at the Indiana Bar Center in Indianapolis, Indiana, and to remain at the seminar throughout the day, all of which is more clearly shown by a schedule for the seminar, which is attached hereto as Exhibit "C".

4. As set forth in the earlier Motion to Quash, the undersigned has no direct information concerning the facts and circumstances of the merits of this criminal action, has no interest whatever in its outcome, and has no documents described in the current Subpoena Duces Tecum, other than ordinary law firm telephone bills and his professional calendar, which are confidential, proprietary, immune from production, and irrelevant to issues in this criminal action, which telephone bills and calendars are available for an *in camera* review by this Court.

5. The undersigned does not even know the subject matter of the February 22 proceeding to which the Subpoena purportedly pertains.

I affirm, under the penalties for perjury, that the foregoing statements are true and correct, to the best of my knowledge and belief.

/s/ Leonard E. Eilbacher

Leonard E. Eilbacher

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 8 day of February, 1989, a true and correct copy of the above and foregoing was served upon all counsel of record, as follows: Daniel J. Sigler, Attorney, 227 South Second Street, P. O. Box 554, Decatur, Indiana 46733, and Lieu B. Hoang, 1682 Hobson Road, Fort Wayne, Indiana, 46805.

/s/ Leonard E. Eilbacher

Leonard E. Eilbacher
900 Paine Webber Building
Fort Wayne, Indiana 46802
219/423-1311
Supreme Court # 6671-02

GENERAL DOCKET

U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Hoang, Lieu B. v. Sims, Stephen, et al
Appeal from: United States District Court
prisoner appeal - state - habeas corpus/cpc denied
Filed: 5/28/91
Fee status: ifp pending-app.ct.

91-2206

PRO SE

5/31/91	Filed prose motion by Appellant Lieu B. Hoang for release pending review of decision failing to release. [267519-1] [91-2206] (grac)
5/31/91	Filed prose motion by Appellant Lieu B. Hoang for certificate of probable cause [267914-1], and for stay of state court proceedings pending appeal. [267914-2] [91-2206] (grac)
5/31/91	Filed Appellant Lieu B. Hoang jurisdictional statement. [91-2206] [274910-1] (flyn)
6/6/91	Filed Appellee Stephen M. Sims, Appellee Daniel J. Sigler, Appellee John W. Forcum, Appellee Dane L. Tubergen jurisdictional statement. [91-2206] [268968-1] (rob)

STATE OF INDIANA	)	IN THE ALLEN SUPERIOR COURT
	) SS:	
ALLEN COUNTY	)	CAUSE No. 02 D 04 - 8905 - CF - 341
STATE OF INDIANA	)	
vs.	)	
LIEU B. HOANG	)	

Order Determining Lack of Capacity to Stand Trial

The State of Indiana appears by Special Prosecuting Attorney Daniel Sigler, and the Defendant appears in person, with this cause coming to be heard upon the issue of the Defendant's present comprehension to understand the nature of the criminal action against him and the proceedings thereon, and to make his defense, the evidence is submitted and concluded, and the Court, being duly advised thereby, now finds:

That the two court-appointed, disinterested psychiatrist, Jay D. Fawver, M.D. and Ludwig G. Heinemann, M.D. testified that in their opinion the Defendant currently does not have the capacity to stand trial. The Court finds that the Defendant suffers from paranoid personality disorder, manic depressive disorder and persecutory delusional disorder. The Court further finds that the Defendant presently does not have comprehension sufficient to make a defense to this criminal action against him. Proceedings in this cause shall be delayed and continued and defendant is hereby committed to the Department of Mental Health, State of Indiana, to be confined by said Department in an appropriate psychiatric institution. The Superintendent thereof shall certify to this Court within ninety (90) days whether the defendant has a substantial probability of attaining comprehension sufficient to understand the proceedings herein and make a defense thereto within the foreseeable future. [IC 35-36-3-3]

If substantial probability of comprehension does not exist, the Department shall initiate regular commitment proceedings. If substantial probability does exist, the Department shall retain custody of the Defendant until such comprehension is attained, for a period not exceeding six (6) months after the defendant's admittance. If such comprehension has not been attained within the six (6) month period, the Department of Mental Health shall institute regular commitment proceedings in the proper court. [IC 35-36-3-4]

The Sheriff of Allen County, Indiana, upon oral notification by the Court, shall comply with and perform all things appropriate to implement this order.

So ordered this 26th day of July, 1991.

/s/ Dane L. Tubergen

Dane L. Tubergen, Special Judge
Allen Superior Court